

United States
Circuit Court of Appeals

For the Ninth Circuit.

JESSE H. SHREVE, and ARCHIE C. SHREVE,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

In Two Volumes

VOLUME II

Pages 481 to 961

Upon Appeal from the District Court of the United
States for the District of Arizona.

FILED

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PAUL P. O'BRIEN,



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(Testimony of James M. Shumway.)

Shreve came into the organization. I testified I met Archie Shreve at the time I went to work for the Security Building and Loan Association in July or August, 1930. I met Jesse Shreve shortly afterward. I also stated that I met Dan Shreve two or three months prior to December, 1930, when I signed these exhibits that I have testified about in this case, when I signed the note and mortgage. I saw Jesse Shreve or Archie Shreve after Dan Shreve took over the Building and Loan Association. I don't recall how many times. I am positive I saw them between the time Dan Shreve took over the [385] Building and Loan Association and the time the Building and Loan Association closed, in the Phoenix office of the Building and Loan. I don't recall that I had any conversation with either one of them at that time. I was a depositor in the Security Building and Loan Association. I became a depositor when I was first interested in the company at the time I became employed in 1930. I remember the name of Mrs. Harrington, a bookkeeper for the Building and Loan Association. I remember her being in the office. I do not recall seeing her in the court house during the trial of this case.

(Thereupon Mrs. Harrington was called into the court room.)

The witness continuing: I remember the name better than her. I don't think she was in the office very long. I believe she was in the office while I was there. I could not say positively. I remember the

(Testimony of James M. Shumway.)

name as being in the office. I can't remember Mrs. Harrington being in there. When I went to work I made my deposit in the Security Building and Loan Association but I don't believe I received my first pass book from Mrs. Harrington. I have not discussed this case with anyone since I testified this morning.

Redirect Examination

I remember the name as being Mrs. Harrington. I don't remember her. I was never a member of the Security Building and Loan Association.

B. A. MASON,

called as a witness on behalf of the Government, testified:

I am an attorney and I reside in Beverly Hills, California. I was the owner of property in Arizona located near Wellton. I transferred to L. P. Valentine property described in the Deed which you hand me, being Government's Exhibit 129 for identification. My name appears as grantor in the deed.

Thereupon counsel for the Government offered in evidence [386] Government's Exhibit 129 for identification.

Mr. Hardy: I make the same objection to the receipt of Government's Exhibit No. 129 for identification in evidence that we made to Government's Exhibit No. 125. It is also an exemplified copy of a warranty deed.

(Testimony of B. A. Mason.)

The Court: All right, the same ruling.

Mr. Hardy: Exception.

Government's Exhibit 129 was received in evidence.

GOVERNMENT'S EXHIBIT 129,

which, abstracted to the issue, is in full substance as follows: Exemplified copy of Warranty Deed executed by Benjamin A. Mason September 19, 1930, acknowledged same date before Bessie M. Clement, Notary Public for the County of Los Angeles, California, September 29, 1930, conveying to L. P. Valentine, consideration \$10.00, Lots 3 and 4 and the South Half of the Northwest Quarter of Section 3, and Lot 4 of Section 4, and Lot 1 of Section 5, all in Township 9 South, Range 18 West, Gila and Salt River Base and Meridian, in the County of Yuma, State of Arizona, according to the official plat of the survey of said land returned to the General Land office by the Surveyor General; recorded October 30, 1930, with the County Recorder of Yuma County at request of San Diego-Pacific Title Company.

The witness continuing: I received from L. P. Valentine and Lyda Valentine Government's Exhibit 130 for identification, being an exemplified copy of a realty mortgage. I am named as mortgagee in this property. I am the party named as the assignor in Government's Exhibit 131 for identification, being assignment of mortgage, and I signed the

(Testimony of B. A. Mason.)

mortgage on the property mentioned in Government's Exhibit 129. I owned that property in the fore part of 1930, until I traded it, and a year or two prior to that, I believe.

Q. What did you value it at? [387]

A. And a year or two prior to that, I believe.

Q. What did you value the land at?

Mr. Hardy: We object to that.

Mr. Peterson: Nobody in the world can better answer it than the owner.

The Court: Let him make his objection.

Mr. Hardy: We object to the witness placing a valuation on the property for the reason it is irrelevant, immaterial and incompetent and he has not been qualified yet for the purpose of placing valuation on the property except ownership by him.

The Court: That is sufficient.

Mr. Hardy: The value, as I understand, is determined by the market value.

The Court: But the owner can always testify. Go ahead.

Mr. Peterson: Q. What is the value of that?

Mr. Hardy: Exception.

A. How did I value it at that time?

Mr. Peterson: Q. Yes.

A. It has been so long ago I am not absolutely sure, but I think I valued it at about fifteen or twenty dollars an acre.

Mr. Peterson: That is all, Mr. Mason.

(Testimony of B. A. Mason.)

Cross Examination

At the time I owned the property I might have valued it to some extent at more than fifteen or twenty dollars an acre.

Redirect Examination

I don't think I valued it at more than twenty dollars.

Mr. Peterson: At this time I offer Government's Exhibits No. 130 and 131, being exemplified copies of a warranty deed.

The Court: The deed is admitted, isn't it? [388]

Mr. Peterson: Being a realty mortgage, 130, and an assignment, 131, of mortgage, in evidence, being exemplified copies.

Mr. Hardy: Which one is in evidence?

Mr. Peterson: No. 129.

Mr. Hardy: You offer 130 and 131?

Mr. Peterson: Yes.

Mr. Hardy: We object to the receipt of these exhibits in evidence for the same reason as we objected to the receipt of Government's Exhibit No. 125. For the further reason that no proper foundation has been laid for the admission of these exhibits as against the defendants on trial.

The Court: Overruled.

Mr. Hardy: Exception.

Government's Exhibits 130 and 131 were received in evidence.

(Testimony of B. A. Mason.)

GOVERNMENT'S EXHIBIT 130,

which, abstracted to the issue, is in full substance as follows: Exemplified copy of Realty Mortgage executed by L. P. Valentine and Lida J. Valentine October 17, 1930, and acknowledged on same date before Fred D. Grant, Notary Public, San Diego, California, mortgaging to B. A. Mason, consideration \$1750.00, Lots 3 and 4 and the South Half of the Northwest Quarter of Section 3, and Lot 4 of Section 4, and Lot 1 of Section 5, all in Township 9 South, Range 18 West, Gila and Salt River Base and Meridian, in the County of Yuma, State of Arizona, according to the official plat of the survey of said land returned to the General Land Office by the Surveyor General; recorded at request of San Diego-Pacific Title Co., Oct. 30, 1930, with the County Recorder of Yuma County, Arizona; notation thereon: Assigned to A. C. Shreve by instrument dated January 5, 1931, see Book 4 of Assignments, page 349, A. K. Ketcherside, Co. Rec. by [389] L. S. Adams, Dep. Released by instrument dated January 3, 1931, see Book 8 Releases page 290, A. K. Ketcherside, Co. Rec. by R. B. Leatherman, Dept. Rec. I hereby certify that the note secured by this mortgage was produced and cancelled in my presence Jan. 5, 1931 A. K. Ketcherside, Co. Rec. by Lucy Frank, Dep.

(Testimony of B. A. Mason.)

GOVERNMENT'S EXHIBIT 131,

which, abstracted to the issue, is in full substance as follows: Exemplified copy of Assignment of Mortgage executed to A. C. Shreve by B. A. Mason January 3, 1931, acknowledged on same date before H. M. Howrey, Notary Public, San Diego, California, consideration \$10.00; assigns mortgage bearing date October 17, 1930 executed by L. P. Valentine and Lida J. Valentine to B. A. Mason, which mortgage was recorded on October 30, 1930 in Book 39 of Mortgages page 156, in the office of the County Recorder of Yuma County, Arizona; recorded at request of Security Title Co. Jan. 5, 1931 in the office of the County Recorder of Yuma County, Arizona.

L. P. VALENTINE,

called as a witness on behalf of the Government, testified:

I reside in Los Angeles. I was residing in San Diego in 1930 and at that time I was acquainted with A. C. Shreve or Jesse Shreve. I first became acquainted with Archie Shreve in the year 1930, in connection with a real estate deal on property located in Arizona. I transferred the property through Archie Shreve. Government's Exhibit 132 for identification, being an exemplified copy of a warranty deed from L. P. Valentine and Lyda D. Valentine on property located in Yuma County, Arizona, is the property I transferred to Lyda Dreyfus, and I

(Testimony of L. P. Valentine.)

am the L. P. Valentine mentioned in that deed. I am the party mentioned in Government's Exhibit 133 for identification, which is an exemplified copy of a warranty deed to Frank D. Arrington, and I transferred that property to Frank D. Arrington. [390]

Mr. Peterson: We offer Government's Exhibit No. 132 and 133, being two exemplified copies of warranty deeds, in evidence at this time.

Mr. Hardy: We object to the introduction in evidence, your Honor, for the reason and upon the same grounds as we objected to the introduction of Government's Exhibit No. 125, and for the further reason that no proper foundation has been laid at this time for the admission of the exhibits in evidence.

The Court: Overruled.

Mr. Hardy: Exception.

Government's Exhibits 132 and 133 were received in evidence.

GOVERNMENT'S EXHIBIT 132,

which, abstracted to the issue, is in full substance as follows: Exemplified copy of Warranty Deed executed by L. P. Valentine and Lida J. Valentine December 30, 1930, and acknowledged on the same date by L. P. Valentine and Lida J. Valentine before Fred D. Grant, Notary Public, San Diego County, California, conveying to Lida Dreyfus, consideration \$10.00, the Southeast Quarter of the Northwest Quarter of Section 3, Township 9 South, Range 19

(Testimony of L. P. Valentine.)

West, Gila and Salt River Base and Meridian; Lot 3 in Section 3, Township 9 South, Range 18 West, Gila and Salt River Base and Meridian; Lot 1 in Section 5, Township 9 South, Range 18 West, Gila and Salt River Base and Meridian, all in Yuma County, Arizona, subject to encumbrance of \$1750.00, which grantee assumes and agrees to pay; recorded at request of Security Title Company Jan. 5, 1930, A. K. Ketcherside, County Recorder of Yuma County.

GOVERNMENT'S EXHIBIT 133,

which, abstracted to the issue, is in full substance as follows: Exemplified copy Warranty Deed executed December 30, 1930, by L. P. Valentine and Lida J. Valentine and acknowledged on the same [391] date before Fred D. Grant, Notary Public for the County of San Diego, California, conveying to F. D. Arrington, consideration \$10.00, the same property described in Government's Exhibit 132 and subject to same encumbrances; recorded at request of Security Title Co. Jan. 5, 1931, A. K. Ketcherside, County Recorder.

The witness continuing: I gave another property in exchange to Mr. Mason as the consideration for that property. When I deeded the property to Arrington and Dreyfus I received property in San Diego.

Mr. Peterson: Q. What did you value that property at when you owned it, Mr. Valentine?

Mr. Hardy: We object also. That is immaterial.

(Testimony of L. P. Valentine.)

The Court: He was asked what he valued the property at while he owned it. He may answer.

Mr. Hardy: Exception.

A. Well, I figures it to be for my purpose, it was worth about ten dollars an acre.

Mr. Hardy: Now, we move that the answer be stricken because it is a qualified valuation, he says, for his purpose.

The Court: All right, you can cross examine him upon that.

Mr. Hardy: Exception.

Cross Examination

There was no stipulated value represented when I sold the property. It was simply an exchange without any mention of valuation.

THEODORE CASTLE,

called as a witness on behalf of the Government, testified:

I reside in Los Angeles. My business is general insurance agent. I have lived in Los Angeles off and on for the last twenty-three years. I lived in San Diego and am acquainted with J. H. [392] Shreve and A. C. Shreve. I have known them about twenty years. I was employed by either Jesse Shreve or Archie Shreve during the year 1930. I don't know whether the exemplified copy of a realty mortgage from F. D. Arrington to Theo. Castle, being Gov-

(Testimony of Theodore Castle.)

ernment's Exhibit 134 for identification, was executed by me. My name appears on it. I guess it must be. My name is Theo Castle and that is the name in the warranty deed. I am the person.

Mr. Peterson: We offer it in evidence at this time.

Mr. Hardy: Let's see it. Mr. Castle, do you know this instrument existed, or do you take it for granted because your name appears on it?

A. If my name appears on it, I take it for granted it was an instrument that was made to me.

Mr. Hardy: We object to the receipt of Government's Exhibit No. 134 for identification in evidence for all the reasons objected to the receipt of Government's Exhibit No. 125, and for the further reason it had not been properly identified.

The Court: It may be received.

Mr. Hardy: Exception.

Government's Exhibit 134 was received in evidence.

GOVERNMENT'S EXHIBIT 134,

which, abstracted to the issue, is in full substance as follows: Exemplified copy of Realty Mortgage executed by F. D. Arrington December 30, 1930, acknowledged same date before H. M. Howrey, Notary Public San Diego County, California, mortgaging to Theo. Castle the Southwest Quarter of Northwest Quarter of Section 3, Township 9 South, Range 18 West, Gila and Salt River Base and

(Testimony of Theodore Castle.)

Meridian; Lot 4 in Section 3, Township 9 South, Range 18 West, Gila and Salt River Base and Meridian; Lot 4 in Section 4, Township 9 South, Range 18 West, Gila and Salt River Base and Meridian, all [393] in Yuma County, Arizona; secures five promissory notes of even date for the principal sum of \$30,000, with interest at 8½% per annum, payable quarterly, due \$2000 on or before one year after date, \$3000 on or before two years after date, \$4000 on or before three years after date, \$5000 on or before four years after date, and \$20,000 on or before five years after date; recorded at request of Security Title Company Jan. 5, 1931, A. K. Ketcherside, County Recorder Yuma County; notation thereon: Assigned to Sec. B & L Assn Jan. 5, 1931, Book 4 Assignments page 350, A. K. Ketcherside by R. B. Leatherman, Dep. Rec. Released by instrument dated Nov. 14, 1931, see book 8 Releases page 359. A. K. Ketcherside, Recorder, by R. P. L. Dep.

The witness continuing: I was working for the Guardian Western Company in San Diego in December, 1930. That was a company in which either one of these defendants was interested. I was employed in the Commonwealth Building.

Q. I will hand you Government's Exhibit No. 135 for identification, Mr. Castle, which is an exemplified copy of a mortgage in which Theo Castle is named as mortgagee, and Lyda Dreyfus mortgagor, and ask you whether or not you are the Theo Castle named in that mortgage.

(Testimony of Theodore Castle.)

A. My answer is the same as it was before, if my name appears in this instrument, I must be the same party.

Mr. Peterson: We offer Government's Exhibit No. 135 in evidence.

Mr. Hardy: We object to the receipt in evidence of Government's Exhibit No. 135 for identification for the same reasons that we objected to the introduction of Government's Exhibit 125, and for the further reason that the exhibit has not been properly identified; no foundation has been laid [394] for its admission.

The Court: Overrule the objection.

Mr. Hardy: Exception.

Government's Exhibit 135 was received in evidence.

GOVERNMENT'S EXHIBIT 135,

which, abstracted to the issue, is in full substance as follows: Exemplified copy Realty Mortgage executed December 30, 1930 by Lyda Dreyfus, mortgaging to Theo. Castle the Southeast Quarter of the Northwest Quarter of Section 3, Township 8 South, Range 18 West, Gila and Salt River Base and Meridian; Lot 3 in Section 3, Township 9 South, Range 18 West, Gila and Salt River Base and Meridian; Lot 1 in Section 5, Township 9 South, Range 18 West, Gila and Salt River Base and Meridian; all in Yuma County, Arizona; secures five promissory notes of even date calling for prin-

(Testimony of Theodore Castle.)

principal sum of \$32,000, with interest at the rate of 8½% per annum, payable quarterly, \$2000 due on or before one year after date, \$2000 on or before three years after date, \$8000 on or before four years after date, and \$18,000 on or before five years after date; recorded at request of Security Title Company Jan. 5, 1931, A. K. Ketcherside, County Recorder by Lucy Frank, Dep. Rec; Assigned to Security Building and Loan Association Jan. 5, 1931, see Book 4 Assignments page 351, A. K. Ketcherside, Co. Rec. Released by instrument dated Nov. 4, 1931 see Book 8 Releases page 359, A. K. Ketcherside, Co. Rec. by R. P. Leatherman, Dep. Rec.

The witness continuing: I did not personally loan \$32,000 on any property located in Arizona. I never loaned any money on that property described in Government's Exhibit 135. I presume I am the one named in this assignment of mortgage from Theo. Castle to Security Building and Loan Association, being Government's Exhibit 136 for identification. With reference to Government's Exhibit 137 for identification, which is an assignment [395] to Security Building and Loan Association, my answer is the same as the previous one.

Mr. Peterson: We offer these assignments in evidence.

Mr. Hardy: We make the same formal objection, your Honor, to the introduction of Government's Exhibits 136 and 137 for identification, for the same reasons we made to Government's Exhibit No. 125.

(Testimony of Theodore Castle.)

The Court: The same ruling.

Mr. Hardy: Exception.

Government's Exhibits 136 and 137 were received in evidence.

GOVERNMENT'S EXHIBIT 136,

which, abstracted to the issue, is in full substance as follows: Assignment of Mortgage executed by Theo. Castle Jan. 5, 1931, acknowledged same date before Vivian Akerberg, Notary Public, San Diego County, California, consideration \$10.00; assigns to Security Building and Loan Association mortgage bearing date December 30, 1930, executed by F. D. Arrington to Theo. Castle, which mortgage was recorded Jan. 5, 1931, in Book 4 of Mortgages at page..... Blotter No. 55, office of the County Recorder of Yuma County, Arizona; recorded at request of Security B & L Assn. Jan. 5, 1931. A. K. Ketcherside, County Recorder, Yuma County.

GOVERNMENT'S EXHIBIT 137,

which, abstracted to the issue, is in full substance as follows: Exemplified copy Assignment of Mortgage executed by Theo. Castle January 5, 1931, acknowledged same date before Vivian Akerberg, Notary Public, San Diego County, California, consideration \$10.00; assigns to Security Building & Loan Association mortgage dated Dec. 30, 1930, executed by Lyda Dreyfus to Theo. Castle, which mortgage was recorded on Jan. 5, 1931 in Book 40 of

(Testimony of Theodore Castle.)

Mortgages, page..... Blotter No. [396] 57, in the office of the County Recorder of Yuma County, Arizona; recorded at request of Security B & L Assn Jan. 15, 1931, A. K. Ketcherside, County Recorder, Yuma County.

FRANK D. ARRINGTON,

called as a witness on behalf of the Government, testified:

I live in New York and have been acquainted with the defendants A. C. or J. H. Shreve for something over fifteen years. I knew them in San Diego, California. I resided in San Diego from 1922 up to 1934. I was residing there in 1929 and 1930. I was associated with them in the Southwest Union Securities Corporation and Community Building and Loan Association. I was not associated with them in December, 1930. I think I severed my connection with them in 1927 or 1928, I forget. In 1930 I was not engaged in any business. I am the F. D. Arrington appearing in Government's Exhibit 133, being an exemplified copy of warranty deed to some property in Yuma County, Arizona. I am the grantee named in this deed. I am the F. D. Arrington named as mortgagor in exemplified copy of realty mortgage on some property in Yuma County, Arizona, being Government's Exhibit 134. I was in San Diego at that time. I presume if I signed that paper that I am the F. D. Arrington named as grantor in Gov-

(Testimony of Frank D. Arrington.)

ernment's Exhibit 138 for identification, being exemplified copy of a warranty deed in which F. D. Arrington of San Diego, California, is named grantor.

Mr. Flynn: At this time, your Honor, we offer in evidence Governemnt's Exhibit 138 for identification.

Mr. Hardy: We make the same objection to the receipt in evidence of Government's Exhibit 138 for identification as we made to Government's Exhibit 125.

The Court: The same ruling.

Mr. Hardy: Exception.

Government's Exhibit 138 was received in evidence. [397]

GOVERNMENT'S EXHIBIT 138,

which, abstracted to the issue, is in full substance as follows: Exemplified copy of Warranty Deed executed by F. D. Arrington December 31, 1930, and acknowledged same date before H. M. Howrey, Notary Public, San Diego County, California, conveying to Arizona Holding Corporation the Southwest Quarter of Northwest Quarter of Section 3, Township 9 South, Range 18 West, Gila and Salt River Base and Meridian; Lot 4 in Section 3, Township 9 South, Range 18 West, Gila and Salt River Base and Meridian; Lot 4 in Section 4, Township 9 South, Range 18 West, Gila and Salt River Base and Meridian, all in Yuma County, Arizona; re-

(Testimony of Frank D. Arrington.)

corded at request of Ariz. Holding Corp. Nov. 16, 1931, A. K. Ketcherside, Co. Rec. Yuma County.

The witness continuing: I never received any money upon a realty mortgage upon property located in Yuma County, Arizona, described in Government's Exhibit 134. I never received any consideration of any kind for conveying the property described in that mortgage and also described in this deed which is Governemnt's Exhibit 138.

LYDA DREYFUS,

called as a witness on behalf of the Government, testified:

I reside in Mill Valley, California. I have resided in San Diego. I have known the defendants J. H. Shreve and A. C. Shreve since about 1919. I knew them during the year 1930 and was living in San Diego at that time, when I was employed in the office of A. C. Shreve and J. H. Shreve. I was managing an apartment for them. During that time I think I signed two papers. I never owned any property in Yuma County, Arizona.

Mr. Peterson: Q. Government's Exhibit 135 is an exhibit already admitted which is a realty mortgage from Lyda Dreyfus, of the County of San Diego, to Theo Castle, mortgagee, for the amount of \$32,000, signed Lyda Dreyfus, and ask you if you are the Lyda [398] Dreyfus of the County of San Diego?

(Testimony of Lyda Dreyfus.)

A. I lived there, yes.

Q. In 1930?

A. Yes, but now let me see——

Q. Did you ever receive any \$32,000 for the signing of any mortgage?

A. No, sir. I would only know it by my signature.

Q. That is an exemplified copy.

A. It is not my signature.

Q. It is an exemplified copy, it isn't the original.

A. Oh, then I don't know a thing about this then.

Q. Did you know what you were signing when you signed those two papers?

A. It has been so long, I have forgotten the whole thing.

Q. Where did you sign them?

A. I signed one in my apartment, in the apartments, you know, and one at the office.

Q. What office?

A. In the Shreve office.

Q. In the Commonwealth Building?

A. Yes, but then this I couldn't——

Q. Your name is Lyda Dreyfus?

A. Yes, it is, but that isn't what I signed.

Q. What is that?

A. It isn't my signature.

Q. But this is a copy of it, Mrs. Dreyfus, an exemplified copy. You did sign a document?

A. I signed a document, but this isn't the one though. [399]

(Testimony of Lyda Dreyfus.)

Q. This isn't the one you signed, but it is a copy of the one you signed?

A. Then I can't—

Q. Did you ever own any property in the State of Arizona that you know of?

A. No, sir, but then where is the one I signed?

Q. We would like to know.

A. Because if I have forgotten—I mean to say I don't remember, and my name could be put on anything, couldn't it?

Q. No, ma'am.

A. It couldn't?

Q. Maybe the Court can explain this to you. You stated you signed another document in the office in the Commonwealth Building?

A. It seems to me like I did, yes.

Q. Did you know what you were signing, Mrs. Dreyfus?

A. Really, I couldn't say.

Q. Who requested you to sign the documents?

A. I signed one for Mr. Archie. That was San Diego property, nothing to do with Arizona, because I know I only signed one for Arizona.

Q. Are you sure you didn't sign two for Arizona?

A. No.

Q. Did you know this property in Arizona?

A. Mr. Dan told me it was.

Q. What did Archie tell you?

A. He didn't tell me anything.

(Testimony of Lyda Dreyfus.)

Q. I hand you Exhibit 139 for identification, which is an exemplified copy of a warranty deed transferring the same property in Arizona to the Arizona Holding Corporation in which you are named as [400] Lyda Dreyfus.

A. Yes.

Q. Your name is Lyda Dreyfus?

A. Surely.

Q. And you came at that time from the County of San Diego?

A. In what year was it?

Q. 1930.

A. Yes, sure, and have I signed that too?

Q. Not this one, you signed the original.

A. Then how do we know that—is it the same, are you sure? Because really I have forgotten about it, you know.

The Court: Mrs. Dreyfus, it isn't claimed that is your signature. A person executes an instrument and it is taken to the Recorder's office and recorded, and anyone that becomes interested in it afterwards can get a certified copy from the Recorder. The original is returned to the person that places it there for recordation, and thereafter, as I say, anybody that wants a copy of it gets a certified copy from the Recorder, and that is what that is, so of course your signature wouldn't be on it.

A. Then it isn't the thing that I signed then?

The Court: No, it isn't claimed that it is.

A. Because I have really forgotten, Judge, it is so long ago, I have forgotten the details, you see

(Testimony of Lyda Dreyfus.)

and of course the only way I could recognize it would be my signature, don't you know?

Mr. Peterson: Q. But your name is Lyda Dreyfus?

A. Yes.

Q. You come from San Diego? [401]

A. Yes.

Q. You did sign two papers for Mr. Shreve?

A. Yes.

Q. Mr. Dan Shreve and Mr. Archie Shreve?

A. Yes.

Mr. Peterson: We offer this document 139 in evidence.

Mr. Hardy: We object to the introduction of this document, being Government's Exhibit 139 for identification, for the reason that it has not been identified by the grantor appearing therein, and for the same reasons that we objected to the introduction of Government's Exhibit 125.

The Court: It may be received.

Mr. Hardy: Exception.

Government's Exhibit 139 was received in evidence.

GOVERNMENT'S EXHIBIT 139,

which, abstracted to the issue, is in full substance as follows: Exemplified copy of Warranty Deed executed by Lyda Dreyfus December 31, 1930, and acknowledged same date before H. M. Howrey, Notary Public San Diego County, California, conveying to Arizona Holding Corporation, considera-

(Testimony of Lyda Dreyfus.)

tion \$10.00, the Southeast Quarter of Northwest Quarter of Section 3, Township 9 South, Range 18 West, Gila and Salt River Base and Meridian; Lot 3 in Section 3, Township 9 South, Range 18 West, Gila and Salt River Base and Meridian; Lot 1 in Section 5, Township 9 South, Range 18 West, Gila and Salt River Base and Meridian, all in Yuma County, Arizona; recorded at request of Ariz. Holding Corp. Nov. 16, 1931, A. K. Ketcherside, County Recorder Yuma County.

The witness continuing: I never owned any property in Arizona that I know of. I did not receive \$32,000 at any time from Theo. Castle. I did not receive any money at all for transferring that property to the Arizona Holding Corporation. I never [402] received any money at all for signing those papers.

CHARLES M. HINDMAN,

called as a witness on behalf of the Government, testified:

I have resided in Wellton, Arizona, twenty-nine years. I am a registered civil engineer, among other things. I was residing in Wellton in 1930 and 1931. I am acquainted with the property surrounding Wellton. I am acquainted with the property known as Lots 3 and 4 in the Northwest Quarter of Section 3, and Lot 4, Section 4, Lot 1 of Section 5, all in Township 9, Range 18 West, Gila and Salt River

(Testimony of Charles M. Hindman.)

Base and Meridian. The part in 5 is about a half mile from Wellton, and the part in 3 is about two miles east of Wellton. The map, being Government's Exhibit 140 for identification, correctly portrays the property you have asked me about. I had occasion to go to that property in 1931. I recall an occasion when two men came to see me about looking at that property. These men were Mr. Shedd and Mr. Hammonds. I pointed out a part of it to them at that time. I am acquainted with both pieces of that property. I am acquainted with values of lands in that district. I have bought and sold a little bit of land in that district over the twenty-six years I resided there. I know the values of property in that district and have for the period of time I resided there.

Mr. Hardy: (on voir dire examination) I am a civil engineer by profession and I work at that now only at times around Wellton. Wellton is a place of 250 inhabitants, including the surrounding district. I own land about two and a half or three miles from the land Mr. Peterson asked me about. It is not the same kind of land. I have owned 460 acres of land since I have resided in that vicinity, in two different locations. I acquired 240 acres under the Desert Act, in about 1910 or 1912. The balance of the 220 acres I acquired about 1916 or 1917. I never sold any farming land in that vicinity. I sold town lots in the town of Wellton [403] in 1926. I have not bought or sold much real estate in that vicinity. I

(Testimony of Charles M. Hindman.)

bought some from the State of Arizona in 1916 or '18. With the exception of that town lot I have not sold any lands in that vicinity. I devoted most of my time to surveying and farming.

Mr. Peterson: (The witness) I was familiar with the market values of land surrounding Wellton in 1930 and 1931. I know of other transactions that were made, in which I did not take any part, in surrounding lands, and what they sold for. I know of transactions by the Wellton-Mesa Land Company.

Mr. Peterson: Q. Do you know of any transactions by that company?

A. Yes.

Q. You knew what the property brought on the market?

A. Fifty and sixty dollars.

Mr. Hardy: We object to that, your Honor, because it would be immaterial as to what any transactions on the sale by the Wellton-Mesa Land Company would have in the connection—with the land in connection with this case.

The Court: Well, unless it was of the same character of land. We don't know yet whether it is or not.

Mr. Hardy: Mr. Peterson is asking for a valuation now without saying where the land was situated and what the character of the land is, and I object, your Honor, to his giving a valuation.

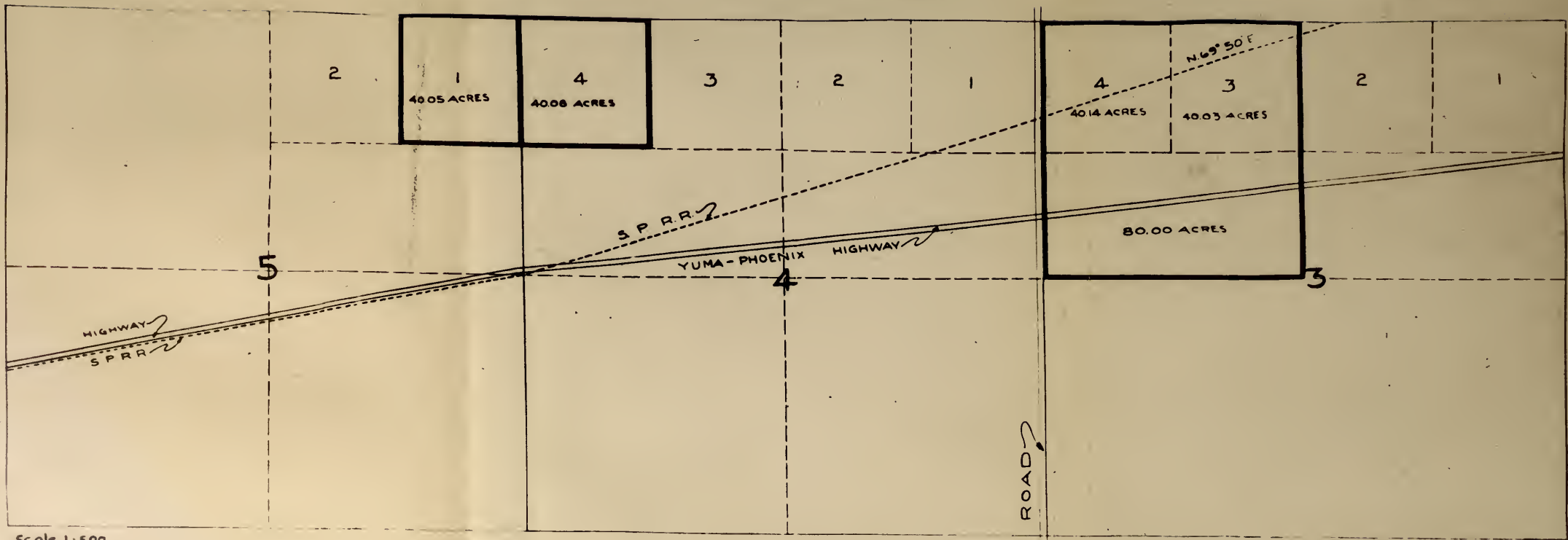
The Court: All right.

(Testimony of Charles M. Hindman.)

The witness continuing: I know about three sales of land. That land is similar with the land which I have described. This land was mesa land, the land which is described in this plat. Mesa land is above the valley land irrigated from wells. There were sales of this particular property. You might call them all [404] desert lands. In my opinion the fair market value of that land in 1930 and 1931 was twenty dollars an acre. There were no improvements on that land.

Government's Exhibit 140 was received in evidence.

GOVERNMENT'S EXHIBIT 140,
a photostatic copy of which is as follows: [405]



Scale 1:500

MADELINE E. SPAIN,

called as a witness on behalf of the Government, testified:

I have resided in Wellton for nineteen years. (Witness looks at map, being Government's Exhibit 140.) I own property in Wellton, and I homesteaded lots 3 and 4 in the South Half of the Northwest quarter of Section 3, and lot 4 of Section 4, and lot 1, Section 5, all in Township 9, Range 18 West. That is near enough to the town of Wellton that I frequently saw it in the years 1930 and 1931. You can see it from town. To my knowledge there were no improvements on that property. I owned it in 1925, for a short while. Let me explain that. It was not actual ownership. It is what you call a desert entry, and we cleared forty acres in the center of this property, which was preliminary to making a desert entry. Then, instead of putting a well on this property, Mr. Mason had some scrip, and he used that to clear this property instead of putting down this well, so it wasn't really actual ownership on our part. We started the preliminary and Mr. Mason ended it with his scrip. To my knowledge there never were improvements on that property, except the clearing of brush in the center of it. I think I am well acquainted with values of property around Wellton. I own property in Wellton. Our business is cafe and store and garage. I have made sales of property in and about Wellton, in 1930 and 1931 and previous to that. I sold some in Section 9, which is approximately two miles fur-

(Testimony of Madeline E. Spain.)

ther than the property which I have identified, and the same kind of property.

Q. I will ask you, in your opinion, Mrs. Spain, what was the value of the property which you have identified in the year 1930 and 1931, the fair market value?

Mr. Hardy: We object to that, your Honor, for the reason the witness had not been qualified to testify to the fair market value of the property involved in this action. It is now apparent that she is estimating or placing a fair market value [407] involved in this action from an isolated sale of property which she made, situated two miles from this property. One sale of a piece of real property in any vicinity does not determine the value of another piece of property. It is not the proper way of determining a fair market value on property. In addition to that, the witness is not qualified as an expert on the value of lands in that vicinity.

The Court: Well, this land apparently is a little different. It seems there is a large acreage of desert land that they call "mesa land", that is true, isn't it?

The Witness: Yes, it is.

Q. Well, the market value is probably what you can get people to pay for it, is that right?

A. Yes, it is all the same kind of land.

The Court: She may answer.

Mr. Hardy: Exception.

The Witness: In my opinion, ten dollars an acre would be a fair market value.

ADELINE E. RAYBURN,

called as a witness on behalf of the Government, testified:

I reside at 1506 West Taylor Street, Phoenix, Arizona. During the year 1930 and 1931 I was residing at 2202 East Jackson. I know Jesse H. Shreve. I first met him in San Diego. I know A. C. Shreve and have known him about the same time. During 1930, while I was living at 2202 East Jackson Street, I was employed at Governor Hunt's, Democratic Headquarters. I saw A. C. Shreve or Jesse Shreve during the summer of 1930. I heard of the Security Building and Loan Association in Phoenix. I never had any occasion to go to their place. I was going to Governor Hunt's Headquarters but happened to look in the Adams Hotel and I saw [408] Mr. Shreve there. I went in. I said, "What are you doing here?" He said, "We are going to start a building and loan trust." I said, "That will be all right, I don't know that we have anything like that here," and Jesse asked about my son, who was very ill. I said, "I wish you have luck", or something like that, and went along. I think I signed some papers in the office of the Security Building and Loan Association in Phoenix for Mr. Dan Shreve. I don't know whether I signed more than one at a time. There was no one in the office but Mr. Dan, I transacted all my business with him. I signed some papers for him.

(Testimony of Adeline E. Rayburn.)

Q. Do you know what they were?

A. I didn't read them, no, I don't, but I understood what they were for, so that he could purchase, not living here a year and not having the property here a year, and I owned my property, and he asked me—as long as there was no money in it, I certainly didn't object to it, helping him out, so I signed the paper in the Adams Hotel.

Mr. Peterson: We offer Government's Exhibit No. 141 for identification, being a warranty deed from the Arizona Holding Company, to A. E. Rayburn.

Mr. Hardy: We object to the introduction of Government's Exhibit 141 for identification, for the same reasons that we objected to the Government's Exhibit 125.

The Court: Overruled.

Mr. Hardy: Exception.

Government's Exhibit 141 was received in evidence.

GOVERNMENT'S EXHIBIT 141,

which, abstracted to the issue, is in full substance as follows: Exemplified copy of Warranty Deed executed by Arizona Holding Corporation by A. C. Shreve, Vice-President, attest Glen O. Perkins, [409] Assistant Secretary of Arizona Holding Corporation, to A. E. Rayburn, July 14, 1930, and acknowledged by A. C. Shreve, Vice-President, and Glen O. Perkins, Assistant Secretary July 21, 1930,

(Testimony of Adeline E. Rayburn.)

before Roy C. Walters, Notary Public Maricopa County, Arizona, conveying, consideration \$10.00, West half of Northwest quarter of Northwest quarter of Sec. 23, Twp. 1 N. 2 E. of the G. & S. R. B. & M., situated in the County of Maricopa, Arizona; filed and recorded at request of Arizona Holding Corporation July 21, 1930, J. K. Ward, County Recorder Maricopa County by O. E. Rogers, Jr., Deputy.

The witness continuing: I did not know anything about the Arizona Holding Corporation deeding to me certain property located in Maricopa County, Arizona, till I got a summons from the marshal that I was to see them and then I found out that it was something about property, but I know I signed that paper in order that they could make a deal of some description. I don't know anything about it, didn't ask any questions about it, because I didn't doubt it.

Mr. Peterson: I offer in evidence an exemplified copy of mortgage, Government's Exhibit 142 for identification, being a mortgage from A. E. Rayburn, to the Arizona Holding Corporation.

Mr. Hardy: We object to the receipt in evidence of Government's Exhibit 142 for identification, for the same reasons that we objected to the introduction in evidence of Government's Exhibit 125.

The Court: Overruled.

Mr. Hardy: And for the further reason, your Honor, it does not appear on the face of this docu-

(Testimony of Adeline E. Rayburn.)

ment that it was signed at the request of either of the defendants now on trial.

The Court: It may be received.

Mr. Hardy: Exception.

Government's Exhibit 142 was received in evidence. [410]

GOVERNMENT'S EXHIBIT 142,

which, abstracted to the issue, is in full substance as follows: Exemplified copy of Mortgage executed July 14, 1930, by A. E. Rayburn, a widow, mortgaging to Arizona Holding Corporation, consideration \$8700.00, the West Half of Northwest Quarter of Northwest Quarter of Sec. 23, Tp. 1 N. R. 2 E. of the G. & S. R. B. & M. and acknowledged on July 21, 1930 before Roy C. Walters, Notary Public Maricopa County, Arizona; filed and recorded at request of Arizona Holding Corp. July 21, 1930. J. K. Ward, County Recorder. Notation: For release of this mortgage see Book 37 of Releases of Mortgage page 67; for assignment of this mortgage see Book 17 Assignments of Mortgages, page 115.

Mr. Hardy: I received no money at all from the Arizona Holding Corporation for a mortgage on property located in Maricopa County.

Mr. Peterson: We offer at this time Government's Exhibit 143 for identification, being an assignment of a mortgage to the Security Building and Loan Association.

(Testimony of Adeline E. Rayburn.)

Mr. Hardy: We object to the receipt in evidence of Government's Exhibit No. 143 for identification, for all of the reasons for which we objected to the receipt in evidence of Government's Exhibit 125, and for the additional reason, your Honor, because it appears upon the face of Government's Exhibit 143, which is an exemplified copy of an assignment of mortgage, that it was executed by the Arizona Holding Corporation by D. H. Shreve, President, and by R. F. Watt, Secretary, and acknowledged before E. F. Young, a Notary Public. There is nothing upon the face of this document which discloses that either the defendants herein had anything to do with it, and in addition it appears that it is executed by D. H. Shreve, as President of the Arizona [411] Holding Corporation, whereas D. H. Shreve is now deceased, and by reason of that fact, any acts or declarations made by the defendant, D. H. Shreve, during his lifetime, are not now admissible as against these defendants; for the reason that neither of these defendants now have the opportunity to examine the said D. H. Shreve with respect to the purposes or contents of this document, nor did they have such opportunity at the previous trial of this case, for the reason that the said D. H. Shreve was alive and a defendant in that action, and not subject to cross examination by any parties to that action.

The Court: The objection is overruled.

Mr. Hardy: Exception.

(Testimony of Adeline E. Rayburn.)

Government's Exhibit 143 was received in evidence.

GOVERNMENT'S EXHIBIT 143,

which, abstracted to the issue, is in full substance as follows: Exemplified copy of Assignment of Mortgage executed July 21, 1930, by Arizona Holding Corporation by D. H. Shreve President and R. F. Watt Secy., to Security Building and Loan Association, consideration \$10.00, assigning to Security Building and Loan Association mortgage bearing date July 14, 1930, executed by A. E. Rayburn to Arizona Holding Corporation, which mortgage was recorded on July 21, 1930 in Book 244 of Mortgages, records of Maricopa County, Arizona, page 58, in the office of the County Recorder of said county; acknowledged before E. F. Young, Notary Public of Maricopa County, Arizona, on same date, by D. H. Shreve and R. F. Watt, President and Secretary; filed at request of Security Bldg. & Loan Assn. Jan. 2, 1931, W. H. Linville, County Recorder of Maricopa County.

Mr. Peterson: I offer in evidence at this time an exemplified copy of Government's Exhibit 144 for identification, being a warranty deed from [412] Dan B. Blackburn to the Arizona Holding Corporation, an Arizona corporation.

Mr. Hardy: Object to the receipt in evidence of Government's Exhibit 144 for identification, for all

(Testimony of Adeline E. Rayburn.)
of the reasons objected to in the receipt of Government's Exhibit 125.

The Court: It may be received.

Mr. Hardy: Exception.

Government's Exhibit 144 was received in evidence.

GOVERNMENT'S EXHIBIT 144,

which, abstracted to the issue, is in full substance as follows: Exemplified copy of Warranty Deed executed June 26, 1930 by Dean B. Blackburn, a widow, to Arizona Holding Corporation, conveying to Arizona Holding Corporation, consideration \$10.00, property situated in Yavapai County, Arizona, and described as that certain parcel of land in the Southwest Quarter of the Northwest Quarter of Section 33, Twp. 14 N., R. 2 W., G. & S. R. B. & M., described as follows: Beginning at the West quarter of corner Sec. 33, Twp. 14 N. R. 2 W., G. & S. R. B. & M., thence N. $0^{\circ} 08' W.$ 258.0 feet; thence W. $89^{\circ} 20' E.$ 202.3 feet to a stake which is the actual point of beginning; thence S. $75^{\circ} 17' E.$ 196.3 feet to an iron pin; thence $12^{\circ} 09' E.$ 51.4 feet to a cross on a rock; thence N. $18^{\circ} 42' N.$ 56.4 feet to a cross on a rock; thence N. $36^{\circ} 36' W.$ 56.4 feet to an iron pipe marking the Northeast corner of said premises; thence N. $83^{\circ} 34' W.$ 173.4 feet to the Northwest corner of said premises; thence S. $09^{\circ} 41' W.$ 60 feet to an iron pin; thence S. $02^{\circ} 27' W.$ 60 feet to the point of beginning; acknowledged same date before A. H. DeRiemer, Notary Public San Diego County, California; filed and recorded at re-

(Testimony of Adeline E. Rayburn.)

quest of Arizona Holding Corporation July 21, 1930, in Book 151 of Deeds pages 149-150, County Records of Yavapai County, Arizona.

The witness continuing: I never knew the Arizona Holding Corporation ever deeded to me certain property in Prescott. [413] Yavapai County.

Thereupon Government's Exhibit 145 was offered in evidence by the counsel for the Government.

Mr. Hardy: Object to the introduction of Government's Exhibit 145 for identification for all the reasons objected to on Government's Exhibit 125.

The Court: Overruled.

Mr. Hardy: Exception.

Government's Exhibit 145 was received in evidence.

GOVERNMENT'S EXHIBIT 145,

which, abstracted to the issue, is in full substance as follows: Exemplified copy of Warranty Deed executed by Arizona Holding Corporation by A. C. Shreve, Vice-President, and Glen O. Perkins, Asst. Secretary, July 21, 1930, to A. E. Rayburn, conveying, consideration \$10.00, all that certain premises described as follows: A parcel of land in the Southwest quarter of the Northwest quarter of Section 33, Twp. 14 N. R. 2 W., G. & S. R. B. & M., described as follows: Beginning at the West quarter corner Section 33, T. 14 N. R. 2 W., G. & S. R. B. & M.; thence N. 0° 08' W. 258.0 feet; thence N. 89° 20' E. 202.3 feet to a stake which is the actual point of

(Testimony of Adeline E. Rayburn.)

beginning; thence S. 75° 17' E. 196.3 feet to an iron pin; thence N. 12° 09' E. 51.4 feet to a cross in a rock; thence N. 18° 42' E. 56.4 feet to a cross on a rock; thence N. 36° 36' W. 56.4 feet to an iron pin marking the Northeast corner Lot 10, Block 3, McNally's Subdivision (unrecorded); thence N. 83° 34' W. 173.4 feet to the Northwest corner of said Lot 10; thence S. 09° 41' W. 60 feet to an iron pin; thence S. 02° 47' W. 60 feet to the point of beginning; acknowledged same date by A. C. Shreve, Vice-President, and Glen O. Perkins, Asst. Secretary of Arizona Holding Corporation, before Roy C. Walters, Notary Public Maricopa County, Arizona; filed and recorded at request of Ariz. Holding Corp. July 22, 1930, in Book 153 of Deeds, page 15, Records of Yavapai County, Arizona, with [414] the County Recorder of said county.

The witness continuing: I never received any money from the Arizona Holding Corporation on a mortgage.

Thereupon Government's Exhibit 146 for identification was offered in evidence.

Mr. Hardy: Object to the receipt in evidence of Government's Exhibit 146 for identification for all of the reasons objected to in the introduction in evidence of Government's Exhibit 125.

The Court: It may be received.

Mr. Hardy: Exception.

Government's Exhibit 146 was received in evidence.

(Testimony of Adeline E. Rayburn.)

GOVERNMENT'S EXHIBIT 146,

which, abstracted to the issue, is in full substance as follows: Exemplified copy of Mortgage executed by A. E. Rayburn, a widow, July 10, 1930, and acknowledged July 21, 1930 before Roy C. Walters, Notary Public Maricopa County, Arizona, mortgaging, consideration \$9700.00, to Arizona Holding Corporation the same property described in Government's Exhibit 145; filed and recorded at request of Ariz. Holding Corp. July 22, 1930, in Book 64 of Mortgages, page 47, records of Yavapai County, Arizona, with the County Recorder of said county. Notation: Assigned, see Book 64 of Mortgages page 163.

Mr. Peterson: We offer Government's Exhibit 147 for identification in evidence, being an assignment of a mortgage from the Arizona Holding Corporation to the Security Building and Loan.

Mr. Hardy: May it please your Honor, Government's Exhibit 147 for identification, is an assignment of mortgage executed by the Arizona Holding Corporation by D. H. Shreve, Vice-President, and Glen O. Perkins, Assistant Secretary. We object to the receipt of this document in evidence for the reasons [415] objected to in the receipt of Government's Exhibit 125 in evidence, and also Government's Exhibit 143.

The Court: Overruled.

Mr. Hardy: Exception.

(Testimony of Adeline E. Rayburn.)

Government's Exhibit 147 was received in evidence.

GOVERNMENT'S EXHIBIT 147,

which, abstracted to the issue, is in full substance as follows: Exemplified copy of Assignment of Mortgage executed by Arizona Holding Corporation by D. H. Shreve, Vice-President, and Glen O. Perkins, Asst. Secretary, August 16, 1930, consideration \$10.00, assigning to Security Building and Loan Association mortgage recorded on July 22, 1930, in Book 64 of Mortgages, page 47, in the office of the County Recorder of Maricopa County, Arizona; acknowledged on same date by D. H. Shreve, Vice-President, and Glen O. Perkins, Asst. Secretary, before Roy C. Walters, Notary Public Maricopa County, Arizona; filed and recorded at request of Security Bldg. & Loan Assn. Jan. 2, 1931, in Book 64 of Mortgages, pages 163-164, records of Yavapai County, Arizona, with the County Recorder of said county.

The witness continuing: I was never a member of the Security Building and Loan Association. I didn't know it was called by that name, that is how ignorant I was of that. I knew it was a building and loan, but I didn't know there was anything more to it.

(Government's Exhibits 141, 142, 143, 144, 145, 146 and 147 were read to the jury by the United States Attorney.)

ED OGLESBY,

called as a witness on behalf of the Government, testified:

I have resided in Phoenix, Arizona, for twenty-seven years, and was residing there in 1930 and 1931, at which time I was County Assessor of Maricopa County. I had been County Assessor for ten years; am now County Treasurer of Maricopa County. I am acquainted [416] with the property known as the Rayburn property, located in the West Half of the Northwest Quarter of the Northwest Quarter of Section 23, Township 1, 2 East. I have been on the property myself quite a few times. I have been engaged in the purchase and sale of lands of various classes and descriptions in Maricopa County. I spent ten years appraising lands in Maricopa County, Arizona. I made an appraisal of this particular piece of property some time after November, 1931.

Mr. Hardy: (On voir dire examination.) At that time I made a personal examination of the land and went upon the land. I was appraising it for tax purposes. I aimed to make an appraisement of the actual market value for the purposes of taxation. I made a cash value of the land. I didn't take into consideration the sale value of the land at the time I fixed this appraisement. It was the cash value. There were hundreds of cases where there would be a difference in the cash value and the sale value. That which is sold under contract with very little

(Testimony of Ed Oglesby.)

money down would sell for more money than it would sell for cash.

Mr. Peterson: I would say the market value, as property was selling, it might have been worth near \$1500.

ANDREW T. HAMMONS,

called as a witness on behalf of the Government, testified:

My business is citrus farming the last three or four years. I have lived in Arizona thirty-seven years. Formerly I was State Superintendent of Banks, and State Banking Inspector. I have had experience in the appraisal of real estate for the State of Arizona, Federal Reserve Bank of San Francisco, Standard Oil Company, Texas Oil Company, Texas Loan Agency, during the past twenty years. I made an inspection and appraisal of the property held by the Security Building and Loan Association after it closed. I believe the appraisal was made for the court in bankruptcy. I am familiar with the property in Tempe known as the Shumway [417] property, on Lot 3 of Block 2 in Goldman's Addition. I made an inspection of that property after the Security Building and Loan Association closed.

Mr. Hardy: (On voir dire examination) This property Mr. Peterson is inquiring about is situated in the town of Tempe. I had not lived in

(Testimony of Andrew T. Hammons.)

Tempe at that time nor before that time. I consulted with persons in Tempe who knew property values there; consulted with Mr. Robertson, I believe, the builder of the house. He lived next door. He was the only person I consulted with to ascertain the value of that property. I did not consult with any real estate men, bankers or merchants.

Mr. Hardy: We object to the answer upon the grounds that the witness has not developed qualifications sufficiently to state the market value of the property at that time, and for the further reason he made the inspection after the Building and Loan Association was closed, which was a transaction after the last date of the letter in the indictment.

The Court: Well, how long after the property was transferred was it appraised?

Mr. Peterson: Mr. Hammons, do you recall how soon after the 7th day of November, 1931, that this appraisal was made?

A. I made the appraisal—I can't remember, but it was in the month of November.

The Court: Of 1931?

A. Of 1931, about the latter part of November, 1931, as I recall.

The Court: All right, he may answer.

Mr. Hardy: An exception.

Mr. Peterson: Q. What, in your opinion, was the fair market value of the property at that time?

A. \$5000. [418]

FRANK J. CORDIS,

called as a witness on behalf of the Government, testified:

I reside in Tucson. I have resided in Tucson all my life. I am connected with the Tucson Daily Citizen and have been for about eighteen years. I was connected with it during 1930 and 1931, in the capacity of General Manager. Government's Exhibits 148 and 148-A for identification is an edition of the Tucson Daily Citizen of February 7th, 1931. Government's Exhibit 148-A for identification carries an ad of the Security Building and Loan Association. Government's Exhibits 149 and 149-A for identification is an edition of the Tucson Daily Citizen and includes an ad of the Security Building and Loan Association.

Thereupon counsel for the Government offered in evidence Government's Exhibits 148 and 148-A, and 149 and 149-A.

GOVERNMENT'S EXHIBIT 148

for identification, which is a newspaper published by the Tucson Daily Citizen, Tucson, Arizona, February 7, 1931, which exhibit for identification was not received in evidence.

GOVERNMENT'S EXHIBIT 148-A

for identification, which is a newspaper published by the Tucson Daily Citizen, Tucson, Arizona, February 7, 1931, which exhibit for identification was not received in evidence.

(Testimony of Frank J. Cordis.)

GOVERNMENT'S EXHIBIT 149

for identification, which is a newspaper published by the Tucson Daily Citizen, Tucson, Arizona, April 4, 1931, which exhibit for identification was not received in evidence.

GOVERNMENT'S EXHIBIT 149-A

for identification, which is a newspaper published by the Tucson Daily Citizen, Tucson, Arizona, April 4, 1931, which exhibit for identification was not received in evidence. [419]

Cross Examination.

I testified that there appear in those papers advertisements by the Security Building and Loan Association. One of my men handled the advertisements, I mean one of the employees of the Tucson Daily Citizen. I don't recall who. I do not know by whom those ads were given to the Tucson Daily Citizen. I can not say whether all those ads appearing in those editions were given to the paper by either J. H. Shreve or A. C. Shreve who are now on trial. I can't say that they knew anything about those ads. I can't say who prepared or gave those ads to the Tucson Daily Citizen, outside of that they came from that particular institution. I know that because we received the copy from that institution. I know personally that that copy come from their place of business. It was the only place it could come from. That is my surmise. The ads were solicited from that institution in Tucson. I knew the

(Testimony of Frank J. Cordis.)

institution also had an office in Phoenix. We picked up our copy at that particular location. I don't know who prepared the ads. We merely picked up the copy for that ad. By "we" I meant the paper did. I did not pick up the ad personally. One of my solicitors picked it up. I did not personally solicit any of these ads. I talked to Mr. Hobbs about advertising. John C. Hobbs was manager of the Tucson office. I had not talked to A. C. Shreve or J. H. Shreve about these ads. They came to our paper by one of our solicitors. I could not tell you his name. I could not testify now who prepared these ads.

(On objection by attorneys for defendants, counsel for the Government withdrew the offer to Government's Exhibits 148, 148-A, 149 and 149-A in evidence.)

The witness continuing: Government's Exhibits 150 and 150-A for identification is an edition of the Tucson Daily Citizen, issued in general circulation, as is Government's Exhibits 151 and 151-A for identification. The date of Government's Exhibit 151 and 151-A is of November 8th, 1930. Government's Exhibits 152 and [420] 152-A for identification is an issue of the Tucson Citizen as of June 13, 1931, issued and in general circulation. Government's Exhibits 153 and 153-A is an edition of the Tucson Citizen of March 28th, 1931, issued in general circulation. Government's Exhibits 154 and

(Testimony of Frank J. Cordis.)

154-A for identification are two editions of the Tucson Citizen of June 3rd, 1931, issued in general circulation. Portions of the editions of the Tucson Daily Citizen go through the mail.

GOVERNMENT'S EXHIBIT 150

for identification, which is a newspaper published by the Tucson Daily Citizen, Tucson, Arizona, June 9, 1931, which exhibit for identification was not received in evidence.

GOVERNMENT'S EXHIBIT 150-A

for identification, which is a newspaper published by the Tucson Daily Citizen, Tucson, Arizona, June 9, 1931, which exhibit for identification was not received in evidence.

GOVERNMENT'S EXHIBIT 151

for identification, which is a newspaper published by the Tucson Daily Citizen, Tucson, Arizona, November 8, 1930, which exhibit for identification was not received in evidence.

GOVERNMENT'S EXHIBIT 151-A

for identification, which is a newspaper published by the Tucson Daily Citizen, Tucson, Arizona, November 7, 1930, which exhibit for identification was not received in evidence.

GOVERNMENT'S EXHIBIT 152

for identification, which is a newspaper published by the Tucson Daily Citizen, Tucson, Arizona, June

(Testimony of Frank J. Cordis.)

13, 1931, which exhibit for identification was not received in evidence. [421]

GOVERNMENT'S EXHIBIT 152-A

for identification, which is a newspaper published by the Tucson Daily Citizen, Tucson, Arizona, June 13, 1931, which exhibit for identification was not received in evidence.

GOVERNMENT'S EXHIBIT 153

for identification, which is a newspaper published by the Tucson Daily Citizen, Tucson, Arizona, March 28, 1931, which exhibit for identification was not received in evidence.

GOVERNMENT'S EXHIBIT 153-A

for identification, which is a newspaper published by the Tucson Daily Citizen, Tucson, Arizona, March 28, 1931, which exhibit for identification was not received in evidence.

GOVERNMENT'S EXHIBIT 154

for identification, which is a newspaper published by the Tucson Daily Citizen, Tucson, Arizona, June 3, 1931, which exhibit for identification was not received in evidence.

GOVERNMENT'S EXHIBIT 154-A

for identification, which is a newspaper published by the Tucson Daily Citizen, Tucson, Arizona, June 3, 1931, which exhibit for identification was not received in evidence.

OLIVER KING,

called as a witness on behalf of the Government, testified:

I have resided in Phoenix for thirty years. In 1930 and 1931 I was circulation manager of the Republic and Gazette. Government's Exhibit 155 for identification is an edition of the Phoenix Gazette of December 31st, 1930. Government's Exhibit 156 is an edition of the Phoenix Gazette, issued in general circulation. Parts or portions of the Phoenix Gazette are sent through [422] the mails to customers.

GOVERNMENT'S EXHIBIT 155

for identification, which is a newspaper published by the Phoenix Evening Gazette, Phoenix, Arizona, December 31, 1930, which exhibit for identification was not received in evidence.

GOVERNMENT'S EXHIBIT 156

for identification, which is a newspaper published by the Phoenix Evening Gazette, Phoenix, Arizona, July 9, 1931, which exhibit for identification was not received in evidence.

FRED SWEETLAND,

called as a witness on behalf of the Government, testified:

I have resided at Tanque-Verde, Pima County, Arizona, for ten years. I have been acquainted with

(Testimony of Fred Sweetland.)

J. H. Shreve for six years. I do not know Archie C. Shreve. I was familiar with an organization known as the Security Building and Loan Association. I became connected with it as an investor and depositor. I have seen the small book marked Government's Exhibit 157 for identification. That is my book.

(Thereupon Government's Exhibit 157 for identification was offered in evidence.)

Cross Examination.

Referring to Government's Exhibit 157 for identification, this is a pass book which was delivered to me at the time I opened an account with the Security Building and Loan Association. I opened the account with John Hobbs. I knew John Hobbs very well. I said I was acquainted with Jesse Shreve. He is the gentleman in the court room with glasses on, the last gentleman there on the right (indicating). I met him in the office of the Security Building and Loan Association in Tucson about four or five years ago. This pass book account was opened March 6th, 1929. I did not [423] know J. H. Shreve when this account was opened. I recall this pass book account signed by John C. Hobbs, Assistant Secretary, on March 6th, 1929. I recall I secured it when I opened my account with the Security Building and Loan Association. I couldn't tell you who signed the name J. H. Shreve in pen and ink because the book was delivered by John Hobbs and I don't remember Mr. Shreve signing it. I don't

(Testimony of Fred Sweetland.)

remember that he was present at the time I opened this account. The account was opened March 6th, 1929, and I met Mr. Shreve four or five years ago. He was introduced to me after I opened up that account. It was quite a little time after I opened this account that I met J. H. Shreve because that account was opened when the Security Building and Loan Association was on the corner and they moved to the other room where I was introduced to him.

Mr. Hardy: We object to the introduction of Government's Exhibit No. 157, for the reason that no proper foundation has been laid for its admission as against the defendants now on trial, as to them it is hearsay and incompetent, and for the additional reason that it appears that there are entries in this exhibit which were made after October 24th, 1931, which are dates after the last date of the indictment letter in the indictment herein, and which is a date subsequent to the last date stated in the bill of particulars when the scheme was devised.

The Court: It may be received.

Mr. Hardy: Exception.

Government's Exhibit 157 was received in evidence.

GOVERNMENT'S EXHIBIT 157,

which, abstracted to the issue, is in full substance as follows: Pass Book Certificate No. 201 issued by Security Building and Loan Association, Tucson, Arizona, to Fred Sweetland, Certificate No. 201, [424] number of certificates 10, signed by J. H.

(Testimony of Fred Sweetland.)

Shreve, President, John C. Hobbs, Asst. Secretary, March 6, 1929, and certifies that Fred Sweetland is the owner and holder of ten 6% pass book certificates of the par value of \$100 each, on which payments may be made at any time and in any amount at the option of the holder. Interest at the rate of 6% per annum will be credited semi-annually on minimum monthly balances, principal or interest may be withdrawn at any time, except Association reserves right to require 30 days' notice of intention to withdraw, as provided in and subject to by-laws of the Association. Certificate does not make holder member of Association or subject to any liability. They are non-assessable, non-forfeitable and guaranteed by all assets of Association. Certificate is non-negotiable and transferable only on the books of the Association. No payments will be received or withdrawals paid without presentation of this certificate and attached to pass book. Discloses various amounts of deposits and withdrawals beginning 7-6-29, final balance Nov. 9, 1931, \$323.00.

The witness continuing: I have seen the envelope marked Government's Exhibit 158 for identification, and the letter marked Government's Exhibit 159 for identification. I received that letter. I received the envelope marked Government's Exhibit 160 for identification through the United States Mail. It came in my mail box in front of my property on the Tanque-Verde, Pima County, Arizona, which was used to deliver United States Mails there.

(Testimony of Fred Sweetland.)

Recross Examination.

Referring to circular attached to the letter, I have testified that it was enclosed with letter. I am absolutely positive of that. I could not have gotten this in the office on the counter, or some place like that. It was in that letter in that envelope. Probably it had been torn since I received it. The letter is signed by John C. Hobbs, who is the gentleman I referred to who opened the account for me as Vice President of the Security Building and Loan Association. [425]

J. BRAXTON LITTLEFIELD,

called as a witness on behalf of the Government, testified:

I have resided in Tucson since 1925 and I have been practicing medicine there since 1926. I was admitted to practice in Arizona at that time. I know Lulu Gatlin. She resides in Tucson and I have been attending her as her physician. She has a fractured neck of the right femur. She is not bedridden altogether. She is up most of the time. I have her up on crutches part of the time. She is not able to come to court to testify on her own; she would have to have assistance. She has to have someone help her in and out of bed, up and down stairways, and up and down out of chairs, stepping from one level to another, she needs assistance. It would be

(Testimony of O. Hohenstein.)

injurious to her health to bring her to court unless she is properly cared for. She needs nursing assistance at all times. It would be possible to get her here by ambulance.

O. HOHENSTEIN,

called as a witness on behalf of the Government, testified:

I have lived at Glendale, Arizona, since 1926, and was living there in 1930 and 1931. I dealt with the Security Building and Loan Association in their Phoenix office. I deposited some money with them, I think, in 1930 or 1931, the year before they went to pieces. The money was deposited in my name but was money of some orphan boys. I received that letter and envelope, being Government's Exhibit 161 for identification. A statement of deposit, interest rather, I had coming on certificate B-141 was enclosed in it. I received that at Glendale, Arizona, at my house, and it came to me through the United States Mails. I made withdrawals from the Security Building and Loan Association.

Mr. Peterson: Q. Did you ever ask for any withdrawals that you did not get?

Mr. Hardy: I object to that, your Honor. It [426] is immaterial and it is not comprehended in the Bill of Particulars filed by the Government in connection with the proof of this case. No time is fixed.

(Testimony of O. Hohenstein.)

The Court: Well, when was it. Go ahead.

The Witness: The withdrawals of moneys happened at several times. The last effort was unsuccessful in August or September of their last years of business, year's business.

Mr. Peterson: That is all.

Mr. Hardy: May we have an exception to the last objection?

The Court: Yes.

Cross Examination.

As stated, I tried to make some withdrawals in August or September before the institution closed. I identify the time as August or September because the boys needed some money for entering school and I usually supplied it. At that time I was not permitted to make withdrawals. Mr. Watt, the book-keeper, refused me. I went to see Mr. Watt in regard to making a withdrawal in August or September, and it was refused. I do not recall that I made a deposit on October 24th, 1931. I am positive I couldn't withdraw in August or September, 1931.

WESLEY PALMER,

called as a witness on behalf of the Government, testified:

I reside about a mile and a half northwest of Mesa, Arizona, and have resided there since 1925. I

(Testimony of Wesley Palmer.)

had dealings with an organization known as Century Investment Trust in 1930 and 1931. I let them have about \$1500. I received an envelope, being Government's Exhibit 162 for identification, and a letter, being Government's Exhibit 163 for identification. I received it at the rural delivery box and this came through the United [427] States Mails, both the letter and envelope. Government's Exhibit 163 for identification came in the envelope marked Government's Exhibit 162 for identification.

Cross Examination

I do not know whether you would call it an investment in the Century Investment Trust, but I let them have \$1500 of my money. I supposed I was getting stock in this company, with the understanding I was to get interest for my money. I gave them \$1500 cash money. If I remember correctly it was a check from the Snowflake and Taylor Irrigation Company. They were owing me money and it was due at a certain time, so I let these people have it. It may possibly have been owing me by the Snowflake Irrigation District quite a while, but if it was, it was left there with my consent and I had never asked for it until this time. I got it in the form of a check, I think. I suppose I held a note on them for this money. If I remember right, the Century Investment Trust got the check. I don't know what you are trying to get at, but they were owing this money and I gave it to

(Testimony of Wesley Palmer.)

them for this stock. Mr. Shumway was the first man to approach me, but Mr. Perkins was the man I dealt with. He signed his name as President of the Company on my capital stock. Mr. Shumway came to me about this Investment Trust business first. I met him in Mesa. He just told me there was a good place to put my money if I wanted to and I suppose he told Mr. Perkins that I had it and Mr. Perkins came to me next with him. I don't remember when they first came, but it was in March the deal was closed, as I remember it. I came to the office of the Century Investment Trust in Phoenix a time or two and talked with Mr. Perkins. I also talked with Dan Shreve at the time. I did not make a proposition to trade the note which I held on the Snowflake Irrigation District for the stock, not because I couldn't collect it. It was not due at that time. I could have collected it when it was due. I don't remember that I discussed with Mr. Perkins or [428] Jim Shumway or Dan Shreve any difficulties which I was having at that time with regard to embezzlement of some funds by my brother. I don't think I sold that note of the Snowflake Irrigation District to the First National Bank of Holbrook. I let the Shreves—the Century Investment Trust have that note. They got the check from the Snowflake-Taylor Irrigation Company. I did not handle the transaction through the First National Bank of Holbrook. I don't know whether it makes any difference whether I was dissatisfied

(Testimony of Wesley Palmer.)

with the investment I had with the Snowflake Irrigation District and told Jim Shumway and Glen Perkins that I was dissatisfied with it and wanted to swap it for stock in the Century Investment Trust. I suppose I was dissatisfied with the investment in the Snowflake Irrigation District, but I don't see that that makes any difference with this.

Redirect Examination

I was later dissatisfied with my investment in the Century Investment Trust.

R. R. GUTHRIE,

called as a witness on behalf of the Government, testified:

I reside in Tucson. I am City Treasurer of the City of Tucson. I resided in Tucson in 1930 and 1931. I had business with the Arizona Holding Corporation, as guardian of the estate of Nellie E. Baker, incompetent. I know something about the Century Investment Trust. At the time I took over the guardianship there were shares of the Arizona Holding Corporation which were later converted into stock with the Century Investment Trust. I have seen letter, being Government's Exhibit 164 for identification. I received it in the mail, United States mail, at Tucson, Route 2, box 225-B, Tucson, Arizona. I have nothing to definitely mark the day I received it but it was shortly after the

(Testimony of R. R. Guthrie.)

date it was mailed. I know it had not been delayed. I received the check with it at that time. [429]

Cross Examination

In regard to the writing on Government's Exhibit 164 for identification, this notation was placed here so that I might definitely know this was the letter I delivered to the Federal Investigation Agent,—know it from any other similar letters which were addressed to me. I put the notation on there and this is my signature. This is also mine, down in the left, lower left-hand corner, which refers to a check. That was not there, it was put on there later. I have no record of the date I received the letter but it was approximately March 1st, 1931. I have no knowledge of where the envelope is. This was a record which was kept in my files as guardian of that estate. I didn't preserve the envelope at all. I don't recall having gone into the office of the Century Investment Trust about that date. I was in the office of the building and loan company in Tucson, and transacted business with John Hobbs. I do not recall ever having transacted any business with J. H. Shreve or A. C. Shreve, the defendants on trial. When the stock was converted from the Arizona Holding Corporation to the Century Investment Trust, there was someone who had come from the California office, but I don't remember who it was. I do not believe I knew D. H. Shreve. At one time I met one of the Shreves in San Diego, where he cashed a check for me upon proper iden-

(Testimony of R. R. Guthrie.)

tification. That is the only one of the Shreves I ever met, to my knowledge. I think he was Archie Shreve, I am not sure, but it was not in connection with any business of the Century Investment Trust or the Security Building & Loan Association, or the Arizona Holding Corporation. At one time I went to the office of the Century Investment Trust at Tucson and attempted to have them sell the stock which was owned by me as guardian, which they were unable to do. I am positive this letter came to me through the mail. There is no question of doubt in my mind concerning that. [430]

OSCAR H. ROBSON,

called as a witness on behalf of the Government, testified:

I reside at 509 South Sixth Avenue, Tucson, and have resided there since 1921. I know the defendants A. C. Shreve and J. H. Shreve. I had a connection or investment with the Century Investment Trust beginning in 1928, with the Arizona Holding Corporation, which later continued with the Century Investment Trust. I have seen the letter, being Government's Exhibit 165 for identification. I received it through the mail in the post office at Tucson, Box #2021. I don't recall what date I received the letter. I saw J. H. Shreve after the closing of the Security Building and Loan Association. The first time I saw him I think I

(Testimony of Oscar H. Robson.)

met him in the office in the Santa Rita Hotel. I saw him at a later date. We had a meeting at our house once and I met Mr. Shreve there. Mr. King, Mrs. Maynard and Edward Jacobs were present. It was several months after it closed.

Q. And who else, if you recall?

Mr. Hardy: Now, we object, your Honor, to any testimony with regard to that conference, or any conversations that were held thereat, because it relates to a point of time subsequent to any time alleged in this indictment or the Bill of Particulars.

The Court: He may answer.

Mr. Hardy: Exception.

The Witness: Harry Nelson and my mother were present.

Q. Did you have any conversation there with Mr. J. H. Shreve relative to the Century Investment Trust?

Mr. Hardy: May our same objection go to this line of questioning?

The Court: Yes.

Mr. Hardy: The same ruling and the exception.

[431]

The witness continuing: There was a meeting in general there in connection with the making of some sort of a settlement to the stockholders, pay them out a percentage of what they had invested. As I recall, no settlement was made then. It was a settlement to be made on ten or twenty per cent,

(Testimony of Oscar H. Robson.)

as I remember it. I think he said he was going to see what he could do about it and let us know at a later date. After that time Mr. Jacobs handled the situation as the receiver. With reference to what J. H. Shreve said relative to settling the stock, it was all in a general conversation, just one thing, that they were going to settle 10 or 20 per cent to see what he could do. I mean J. H. Shreve.

Cross Examination

I cannot tell the exact date I received the letter which is Government's Exhibit 165 for identification. I turned over several letters and the whole file to the Government. They asked me for it and that was the letter they decided on at the time it came through the mail. It has been a long time ago but we more or less decided on that letter being the one that came through the mail. That is, my mother and I decided on that letter being the one that came through the mail; that is, my mother and I, after I turned it over to Mr. Gungl', we decided it was the letter that came through the mail. I don't know exactly how it worked out. I don't mean Mr. Gungl' decided that for me or my mother. By Mr. Gungl' I refer to the gentleman who was the United States Attorney. I don't remember how this letter was selected or how it was we decided this was the letter we should use. I have a post office box at Tucson. I don't remember that I personally took this letter out of the box. My mother had a key to the box also. I have gone to the office

(Testimony of Oscar H. Robson.)

of the Century Investment Trust and received letters or other papers there. That letter was supposed to have been the one. I just could not tell you exactly how it was decided on, after we had a conference with Mr. Gungl'. I don't know whether the envelope was there or what. I know that was the letter that [432] came through the mail. As I say, I don't remember how we decided on it. There were two or three other people in the room besides my mother and Mr. Gungl' and myself. I don't see anyone now in the court room. I don't recall the present counsel and auditors for the Government being in the room at the time I turned the papers over to Mr. Gungl'. I did not take these papers to them voluntarily, they called on me first. The gentleman sitting at the right of Mr. Peterson called on me first at the ranch out in the country. The letter was not at the ranch, I believe I had it in my files in my mother's house in town. Mr. Schroeder, the gentleman whom I have just identified, called at my ranch. I don't know exactly what it was, but he asked me a lot of questions and he wrote them down. I don't remember whether I gave him any files at that time or not. I don't believe he went with me to my mother's house. I think the next thing he did, he told me to deliver any papers to Mr. Gungl' that I had in my possession. Thereafter I delivered all papers to Mr. Gungl', and this paper here, being Government's Exhibit 165 for identification, was included.

(Testimony of Oscar H. Robson.)

I don't remember whether there was an envelope with the papers at that time. Mr. Schroeder did not tell me to tell Mr. Gungl' I got this letter through the mail. No one told me to tell Mr. Gungl' that I got this letter through the mail.

Q. Mr. Robson, are you willing to testify now, under oath, that you received this letter, being Government's Exhibit 165 for identification, through the mails?

Mr. Peterson: We object to that, your Honor, he has gone through with his——

The Court: (interrupting) I was going to ask him the question myself. Go ahead.

(The question was read by the reporter.)

The Witness: As I said, you refer to my past testimony in the other trial, that the letter was [433] received through the mails.

Q. That is the only way you answer now, that it was received through the mail?

A. That is—I don't remember—it has been a long time ago.

Redirect Examination

I testified under oath at the former trial. I saw my testimony then; that is what I said and that testimony stands. This exhibit was addressed to my mother, who has passed away.

HENRY BAKER,

called as a witness on behalf of the Government,
testified:

I reside west of Mesa and have resided there sixty years. I was residing there during 1930 and 1931. I received my mail at Mesa. I had dealings with the Security Building and Loan Association when they borrowed my money, not until then. I lent them my money. I received this envelope and letter through the mail. I recognize my signature on this letter. It came to me through the Mesa Post Office—through the United States mails.

HARRY NELSON,

called as a witness on behalf of the Government,
testified:

I live at 121 West 17th Street, Tucson, and was living there in 1930 and 1931. I had dealings with the Century Investment Trust and also with the Arizona Holding Company. I know both of the defendants. I knew Jesse Shreve in 1928, I don't just remember the time I met the other gentlemen. I have seen Government's Exhibit 168 for identification, being an envelope, and Government's Exhibit 169 for identification, being a letter. I got them out of the mail box at 121 West 17th Street, Tucson, Arizona. They came through the United States mail. I had an investment in either the Arizona Holding Company or the Century In-

(Testimony of Harry Nelson.)

vestment Trust. I saw J. H. Shreve several times after the [434] Century Investment Trust failed, once at a meeting at Mrs. Robson's home, and I met him at the Santa Rita Hotel, and at the Southern Pacific station. If I remember correctly, the meeting at Mrs. Robson's home was about December, 1928 or 1929.

D. W. RUSSELL,

called as a witness on behalf of the Government, testified:

I have resided at Prescott for thirty-two years. My business is banking and in 1930 my business was savings bank. I was employed by the Yavapai County Savings Bank as Secretary-Treasurer in 1930. The Yavapai Savings Bank took a mortgage on the property described in Government's Exhibit 170 for identification, being a mortgage and signed by William Perry. I recognize his signature.

Mr. Peterson: We offer this in evidence.

Mr. Hardy: Your Honor, we object to the introduction of Government's Exhibit 170 as identified here by Mr. Russell, for the reason it appears to be a mortgage executed from a person by the name of Perry, to the Yavapai County Savings Bank, a corporation, which is not a corporation named in the indictment herein, and for the reason that it appears to be immaterial and has no bearing upon the issues in this case. It is a hearsay trans-

(Testimony of D. W. Russell.)

action in so far as these defendants are concerned; no proper foundation has been laid for its admission.

The Court: Overruled.

Mr. Hardy: Exception.

Government's Exhibit 170 was received in evidence.

GOVERNMENT'S EXHIBIT 170,

which, abstracted to the issue, is in full substance as follows: Original mortgage executed April 16, 1930, by Wm. H. Perry, a [435] widower, mortgaging to Yavapai County Savings Bank, a corporation, real estate situated in Yavapai County, Arizona, described as all that certain real estate and property particularly described as follows: All that portion of the Southwest Quarter of the Northwest Quarter of Section Thirty-three (33), in T. Fourteen (14), North of Range Two (2) West of the Gila and Salt River Base and Meridian, in Yavapai County, Arizona, bounded and described as follows: Beginning at the West quarter corner of said Section 33, above Township and Range, thence North $0^{\circ} 08' W.$ 258.0 feet; thence N. $90^{\circ} 20' E.$ 202.3 feet to a stake at which is the actual point of beginning; thence S. $75^{\circ} 17' E.$ 196.3 feet to an iron pin; thence N. $12^{\circ} 09' E.$ 51.4 feet to a cross on a rock; thence N. $18^{\circ} 42' E.$ 56.4 feet to a cross on a rock; thence N. $36^{\circ} 36' W.$ 56.4 feet to an iron pin marking the Northeast corner of said premises;

(Testimony of D. W. Russell.)

thence N. 83° 34' W. 173.4 feet to the Northwest corner of said premises; thence S. 09° 41' W. 60 feet to an iron pin; thence S. 02° 47' W. 60 feet to the point of beginning. Acknowledged same date before R. O. Barrett, Notary Public Yavapai County, Arizona; secures payment of promissory note of even date of mortgage in the sum of \$2500.00; recorded at request of Guarantee Title & Tr. Co., April 16, 1930, with the County Recorder of Yavapai County, Arizona.

The witness continuing: I was the actual manager of the bank. I made that appraisement which is Government's Exhibit 171 for identification, in company with other directors of the bank. That appraisement was upon the property mortgaged by William H. Perry. The date of the appraisement is April 16th, 1930, and I signed it. The property described in Government's Exhibit 170 for identification is the same property described in Government's Exhibit 145. That property is known as the Judge Sweeney property.

Q. Did you make the appraisal in 1930?

A. Yes, sir.

Mr. Hardy: Just a moment, we object to any [436] testimony by this witness with respect to the appraisal of this particular property, for the reasons as heretofore stated. It appears to be a transaction with the Yavapai Savings Bank, a corporation which is not named in the indictment herein, and for the further reason that it has not been

(Testimony of D. W. Russell.)

shown that any appraisement made by this witness was made at the instance or request of the defendants herein, or for their benefit, or that they had any knowledge of such appraisal.

The Court: I suppose the purpose is to determine the value at that time, is that correct?

Mr. Peterson: Yes. We have already introduced into evidence another mortgage on it.

The Court: All right.

Mr. Hardy: An exception.

The witness continuing: I have been engaged in the appraisal of lands in Yavapai County about thirty years. I am fairly well familiar with properties in the city of Prescott. I have had occasion to appraise them for the market value and for loan purposes. I appraised this property in 1930.

Q. And in your opinion, what was the fair market value of that property?

Mr. Hardy: Now, we object to that, your Honor, for the reason that it does not appear that the appraisement of this property has any bearing upon the issues in this case, because the property involved and the corporation named is the Yavapai County Savings Bank, a corporation, which is not named herein, or is referred to in the Bill of Particulars which is supplied by counsel for the Government; and it does not, as yet, appear to be any transaction with which the defendants now on [437] trial were connected, or with which they had any knowledge.

The Court: Well, if it is not connected, it will be stricken. Go ahead.

(Testimony of D. W. Russell.)

Mr. Hardy: An exception.

The Witness: I'd say about \$6000 at that time.

The witness continuing: The mortgage, being Government's Exhibit 170, was paid by foreclosure. We foreclosed on it.

Mr. Hardy: We object to that, your Honor, and ask that the answer be stricken, for the reason that the proceedings in foreclosure would be the best evidence.

Mr. Peterson: We will connect it up with the deed.

Mr. Hardy: We urge the objection.

The Court: Go ahead.

Mr. Hardy: Exception.

The witness continuing: We have a Sheriff's deed. Government's Exhibit 172 for identification is the Sheriff's deed, handed to us at the end of the foreclosure proceedings against this property. We started foreclosure in the fall of 1932.

Mr. Peterson: We offer this document in evidence.

Mr. Hardy: We object to its receipt in evidence, your Honor, upon the grounds that no foundation has been laid for its admission, and the preliminary proceedings leading up to the execution of this Sheriff's deed are not in evidence, and they are the best evidence in order to support the admission of this document.

The Court: Overruled.

Mr. Hardy: Exception.

(Testimony of D. W. Russell.)

Government's Exhibit 172 was received in evidence. [438]

GOVERNMENT'S EXHIBIT 172,

which, abstracted to the issue, is in full substance as follows: Sheriff's deed dated May 3, 1930, executed by George C. Ruffner, Sheriff of Yavapai County, Arizona, conveying to Yavapai County Savings Bank, a corporation, property situated in Yavapai County, Arizona, described in Government's Exhibit 170; deed executed in consideration of \$2750.00 paid by Yavapai County Savings Bank to said Sheriff under certificate of sale on foreclosure covering said premises; recorded at request of Favour & Baker, May 3, 1933, Book 158 of Deeds, page 234, records of Yavapai County, Arizona.

Mr. Hardy: And on the further grounds, your Honor, that the transaction appears from this deed to have been consummated on the 3rd of May, 1933, long subsequent to any date alleged in the indictment herein, or the Bill of Particulars supplied by the Government.

The Court: Overruled. If it is not connected it will be stricken.

Mr. Hardy: Exception.

Cross Examination

W. H. Perry came into the office at the time this transaction was negotiated. That is the only acquaintance I had with him. I had a discussion with him. I don't know what valuation he placed upon

(Testimony of D. W. Russell.)

the property. I never discussed that with him. He simply asked for the sized loan we would make on the place. I don't recollect that he informed me the value of his property was \$11,300. Government's Exhibit 171 for identification is a document which was filed with my bank at the time this loan was being considered and negotiated.

Q. What appraisement did Mr. Perry put on that property?

Mr. Peterson: We object to that, your Honor.

The Court: Is is not in evidence? [439]

Mr. Peterson: No, it is not.

Mr. Hardy: No, but it is marked for identification, your Honor.

Mr. Flynn: You can't ask him about an instrument that is not in evidence.

The Court: You had better wait until it is introduced.

Mr. Hardy: We offer the document in evidence.

The Court: Any objection?

Mr. Peterson: It is hearsay as far as the other signatures on the document, and that is the reason we did not offer it. We merely used it for the purpose of asking this witness if he made the appraisal. There are appraisers on this document who are not here for the purposes of cross examination. Another thing, it is not a question at this time what the borrower valued his property at. Unless he is here, it is hearsay as far as his appraisement is concerned.

(Testimony of D. W. Russell.)

Mr. Hardy: Q. Did you see Government's Exhibit 171 for identification at the time this loan was made?

A. Sir?

Q. Did you see Government's Exhibit 171 for identification at the time this loan was made, or at the time it was negotiated?

A. You are referring to the mortgage?

Q. No, I am referring to Government's 171 for identification.

A. Yes, that was submitted at the time.

Q. And submitted to you?

A. Well, I don't quite get the question. You asked me whether that was submitted with our other papers here? [440]

Q. Yes.

A. Yes, that came with the other papers, the mortgage and the rest of the stuff. They were all held together in one file.

Q. Did you know the contents of this document when you signed the appraisal on the back of it?

A. Oh, certainly, I made that out myself. That was the only form of our application and approval.

Mr. Hardy: No further cross examination.

Mr. Peterson: That is all.

(The witness was excused.)

Mr. Peterson: Has the Court ever ruled on the proffer?

The Court: No, it is not admissible.

Mr. Peterson: What is that?

(Testimony of Helen Maynard.)

The Court: It is not admissible. If the witness were here to be cross examined, it would be different, but it is not under oath.

Mr. Hardy: Exception.

HELEN MAYNARD,

called as a witness on behalf of the Government, testified:

I have resided in Tucson since 1926, and was residing there in 1930. My name in 1930 was Helen Hannon. I am acquainted with the companies known as the Security Building & Loan Association, the Arizona Holding Company and the Century Investment Trust. I had an investment in these companies. I received that letter, which is Government's Exhibit 173 for identification, at 734 East 4th Street, Tucson, Arizona. That letter was delivered at my house in the United States mail.

Cross Examination

I couldn't find the envelope this letter came in; that [441] was destroyed. I looked for it. I don't remember the date I received this letter. It was delivered to me by mail at 734 East 4th Street, by postman. He put it in my mail box on the house. I don't recall exactly the date I received this letter but I parted with it after I was subpoenaed and then I turned the letter over to Mr. Gungl. It didn't have an envelope with it at that time. I had an investment in the Century Investment Trust

(Testimony of Helen Maynard.)

before I received this letter. I also had an investment with the Arizona Holding Corporation and the Security Building and Loan Association before I received this letter which is marked Government's Exhibit 173 for identification. I cannot testify now positively when I received that letter.

Redirect Examination

I received the letter, being Government's Exhibit 173 for identification, on or about the date of the letter.

JAMES P. LAVELLE,

called as a witness in behalf of the Government, testified:

I reside in Los Angeles, California, and am Deputy United States Marshal. I received a subpoena for Alice W. Davis, as Deputy United States Marshal. I made a search for her. I went to the last known address of Alice W. Davis. She had left no address. Then I tried to locate her in the directory and could not locate her. Then I took it up with the Postoffice Inspector and gave it up, as I could not find where she was. I know Mr. Sweet of the Bureau of Investigation made a search for her. He collaborated with me in making the search, and we failed to locate her.

Cross Examination

With respect to the information that I had that Miss Davis was in California, I had all the instruc-

(Testimony of James P. Lavelle.)

tions on the subpoena, which was 812 West Twelfth Street, I think it was 812, or some number of that kind. I mean the subpoena which came out of this Court directed me to look for this witness at 812 West Twelfth [442] Street, Los Angeles, California. I am not positive as to the number, but it was on West Twelfth Street. I went to that number personally and was told she was not there. They told me there was an Alice Davis there and it turned out to be a man. The landlady of the apartment house told me that; told me there was an Alice Davis there and called him in. I suppose his name was Alex, she took it for Alice. The landlady didn't know any lady by the name of Alice Davis. She said Alex Davis lived there. I did not talk to Alex Davis. I did not talk to anyone by the name of Davis. I didn't know whether Alice Davis lived there or not.

Redirect Examination

I never did find Alice W. Davis after I searched the postoffice and the last known address, and the directories. I never found that she had ever been there.

GLEN O. PERKINS,

called as a witness on behalf of the Government, testified:

(Counsel for the Government offered in evidence death certificate of A. W. York, a witness who testi-

(Testimony of Glen O. Perkins.)

fied at the former trial, and who is now deceased.)

Witness: I reside at 652 Rosencrantz, San Diego, California. I knew A. W. York in his lifetime. He is dead, of my own knowledge. He is the A. W. York who testified in these proceedings in 1934. Fannie York is the name of his wife. He was my father-in-law.

Government's Exhibit 174 was received in evidence.

GOVERNMENT'S EXHIBIT 174,

which, abstracted to the issue, is in full substance as follows: Exemplified copy of certificate by Department of Public Health of City of San Diego, California, of death of Alfred William York, dated January 3, 1938, disclosing death of said York on June 18, 1935. [443]

Thereupon the Court admitted the testimony of A. W. York at the former trial to be read at this trial, and such testimony was read by

JOHN W. WALKER,

called as a witness on behalf of the Government, as follows:

I reside at Tucson. I am Secretary to Judge Albert M. Sames, and do court reporting there. I was sworn as court reporter in the case of United States against the Shreves and others in Tucson in 1934. I have brought the testimony of A. W. York.

(Testimony of John W. Walker.)

The witness, reading from his shorthand notes at the former trial of this case in Tucson in 1934:

“A. W. York, direct examination by Mr. Dougherty.

Q. Please state your name.

A. A. W. York.

Q. Where do you reside, Mr. York?

A. San Diego.

Q. And did you ever reside in Arizona?

A. No, sir.

Q. No, Sir?

A. No, sir.

Q. Do you know any of the defendants in this case?

A. Yes, sir.

Q. Which of them?

A. I know Mr. Jesse Shreve, Mr. Archie Shreve, Mr. Glen Perkins.

Q. Did you have any business dealings with the Century Investment Trust and Security Building and Loan Association or the Arozina Holding Corporation?

A. Yes, sir.

Q. When was that?

A. Late in 1930.

Q. Do you know John W. McLaws or Nellie McLaws?

A. No, sir.

Q. Did you at any time purchase any real estate in Navajo County, Arizona, from John McLaws and Nellie McLaws?

(Testimony of John W. Walker.)

A. I did not.

Q. Did you, on or about the 20th day, about the month of December, 1930, mortgage any property in Navajo County, Arizona, to the Security Building and Loan Association?

A. I signed a mortgage, yes, sir.

Q. And where did [444] you sign that mortgage?

A. Oakland.

Q. In Oakland?

A. Yes, sir.

Q. How did you happen to sign that mortgage?"

Mr. Hardy: Now, your Honor, we object to the answer to that question, because no connection has been shown that would justify an answer by the witness to that question, and for the further reason that up to that time no proper foundation has been laid with respect to any testimony with respect to the mortgage.

The Court: Go ahead, read it.

Mr. Hardy: Exception.

The Witness: "A. My daughter wrote me—Mr. Crouch: We did not hear. The witness: My daughter wrote me that the Company she had been connected with had a proposition for me and wanted me to sign some papers."

Mr. Hardy: Now, your Honor, we move that that answer be stricken, because it is hearsay testimony as to these defendants, a letter from his daughter to him.

The Court: It may stand. Go ahead.

(Testimony of John W. Walker.)

Mr. Hardy: Exception.

The witness: "My daughter wrote me saying that the Company that her husband was connected with had a proposition for me in Arizona and that they had something for me to sign, the purpose, as I later on understood, was for me to come over here and take charge of a ranch in the vicinity of Holbrook."

Mr. Hardy: Is that "proposition" or "purpose"?

A. I beg pardon?

Q. Is that "proposition" or "purpose"?

A. Proposition. [445]

Mr. Hardy: Now, we ask that that answer be stricken for the same reasons as we objected to the answer to the other question.

The Court: All right, it may stand.

Mr. Hardy: Exception.

The Witness: "Q. And did you sign that mortgage?"

Mr. Hardy: We object to that, because the mortgage is the best record and best evidence of a transaction, and no mortgage is before the Court or the jury with respect to this testimony.

The Court: Well, do you have the mortgage to hand it to the witness then and identify it by?

The Witness: I don't remember, your Honor whether it was or not. The testimony is rather short.

The Court: All right, go ahead.

Mr. Hardy: An exception, please.

The Witness: "Q. And did you sign that mortgage? A. Later on the mortgage was sent to me and

(Testimony of John W. Walker.)

the deed, yes, sir, which I signed. Q. And was that a mortgage for \$10,500?"

Mr. Hardy: Now, we object, your Honor, because the mortgage is the best record of the transaction, and the mortgage is neither in evidence or before the Court.

Mr. Peterson. Well, we offer the mortgage at this time, an exemplified copy of the mortgage.

(The document was received as Government's Exhibit 175 for identification).

Mr. Hardy: We object to the receipt in evidence of Government's Exhibit 175 for identification for all of the reasons we objected to the [446] receipt in evidence of Government's Exhibit 125, and for the further reason that the document purports to be a mortgage signed not only by A. W. York and by a party named Fannie York, who has not as yet been identified by the witness, whose testimony Mr. Walker is now residing.

The Court: It may be received.

Mr. Hardy: Exception.

The document was received in evidence as Government's Exhibit 175.

GOVERNMENT'S EXHIBIT 175,

which, abstracted to the issue, is in full substance as follows: Exemplified copy Mortgage dated December 4, 1930, executed by A. W. York and Fannie York, his wife, mortgaging to Security Building and Loan Association that certain property situated in

(Testimony of John W. Walker.)

Navajo County, Arizona, described as follows: East Half of Section Twelve (12), Township 17 N. R. 19 E., Gila and Salt River Base and Meridian, Arizona, containing 320 acres, the United States Patent thereof being of record in the office of the County Recorder of Navajo County, Arizona, in Book 2 of Patents at page 325. The South Half of the Northwest Quarter; East Half of the Southwest Quarter; and the East Half of the Northeast Quarter, of Section Ten (10), Township 17 North, Range 20 East, Gila and Salt River Base and Meridian; excepting therefrom the Southwest Quarter of the Northwest Quarter and seven acres 80 rods in length running North and South of the West end line of the Southeast Quarter of the Northwest Quarter of said section; and a parcel situated in the Northwest corner of the East Half of the Southwest Quarter of said section, said parcel running approximately 363 feet South and 360 feet East—total exception being fifty acres—total amount one hundred ninety acres; also reserving to Hattie M. Dietz the oil and gas rights on sixty acres of the East Half of the Southwest Quarter of Section Ten (10), Township 17 North, Range 20 East, [447] except seven acres in the Northeast corner of said East Half; also the Southwest Quarter of the Northwest Quarter of Section Ten (10), Township 17 North, Range 20 East; also seven acres running North and South on the West end of the Southeast Quarter of the Northwest Quarter of said Section Ten (10), which said sixty acres on which oil and gas rights are reserved com-

(Testimony of John W. Walker.)

mences on the South boundary of the same and extending North in square formation until said sixty acres are covered. Recites mortgage executed to secure payment of promissory note dated December 4, 1930, signed by mortgagors for principal sum of \$11,500.00, payable in monthly installments of \$125.00 each, principal sum bearing interest at the rate of 8.4% per annum; acknowledged December 6, 1930, before C. R. Tate, Notary Public, Alameda County, Calif.; filed and recorded at request of W. Dean Nutting December 13, 1930, with the County Recorder of Navajo County, Arizona.

The Witness: "Q. And was that a mortgage for \$10,500? A. I think so, yes, sir. Q. And did you receive any money on that mortgage? A. I did not. Q. And at that same time did you sign a deed?"

Mr. Hardy: Now, we object, your Honor, for the reason that no deed is before the Court, and it is not the best evidence of the transaction.

Mr. Peterson: I ask that the deed be marked for identification.

(The document was marked Government's Exhibit 176 for identification.)

Mr. Peterson: At this time we offer Government's Exhibit 176 for identification, being an exemplified copy of the deed from A. W. York and Fannie York, his wife, to the Arizona Holding Corporation.

Mr. Hardy: Well, we object to the receipt of Government's Exhibit 176 for identification in [448]

(Testimony of John W. Walker.)

evidence, for the same reasons we objected to the receipt of Government's Exhibit 175.

The Court: It may be received.

Mr. Hardy: And for the further reason that no foundation has yet been laid for the admission of the document.

The Court: All right, go ahead.

Mr. Hardy: Exception.

Government's Exhibit 176 was received in evidence.

GOVERNMENT'S EXHIBIT 176,

which, abstracted to the issue, is in full substance as follows: Exemplified copy of Warranty Deed executed by A. W. York and Fannie York, December 6, 1930, consideration \$10.00, conveying to Arizona Holding Corporation the same property described in Government's Exhibit 175; acknowledged by A. W. York on December 6, 1930, before C. R. Tate, Notary Public Alameda County, California, and by Fannie York on December 10, 1930, before Eva F. Hill, Notary Public San Diego County, California; filed and recorded at request of W. D. Nutting Nov. 12, 1931, with County Recorder of Navajo County, Arizona.

The Witness: "A. No, sir, not that I know of.

Q. Simply an accommodation? A. An accommodation.

Q. You signed all of those papers? A. Yes,

sir. Q. Are you related to Glen O. Perkins? A. Yes,

sir. Q. In what way? A. I am his father-in-law.

Q. Do you know R. A. York? A. Yes, sir. Q. Who

(Testimony of John W. Walker.)

is he? A. My son. Q. Your son? A. Yes, sir. Mr. Perrin: Take the witness. Cross examination by Mr. Crouch: Q. I understand that you signed that as an accommodation, Mr. York? A. Yes, sir. Q. And everything was satisfactory so far as you know? A. Yes, sir; it was." [449]

GLEN O. PERKINS,

recalled as a witness on behalf of the Government, testified:

Direct Examination

Fannie York is the wife of A. W. York. A. W. York mentioned in the deed which is Government's Exhibit 177 for identification, is the A. W. York who testified at the former trial. The A. W. York mentioned in Government's Exhibit 178 for identification, which is a grant deed, is the grantee and is the same A. W. York who testified at the former trial.

Mr. Peterson: We offer in evidence Government's Exhibit 177 and 178.

Mr. Hardy: Mr. Perkins, with respect to these exhibits for identification Nos. 177 and 178, a person named in there as Fannie York, in both of them; Fannie York didn't testify in this case, did she?

A. No, sir.

Mr. Hardy: Object to the receipt in evidence on the grounds that they are not properly identified

(Testimony of Glen O. Perkins.)

and, in part, hearsay as to these defendants, and for all the reasons we objected to Government's Exhibit 125; no proper foundation has been laid for their receipt in evidence.

The Court: It may be received.

Mr. Hardy: Exception.

Government's Exhibits 177 and 178 were received in evidence.

GOVERNMENT'S EXHIBIT 177,

which, abstracted to the issue, is in full substance as follows: Exemplified copy of Warranty Deed executed November 7, 1930, by John W. McLaws and Nellie McLaws, his wife, conveying to A. W. York, husband of Fannie York, for consideration of \$10.00, the [450] East Half of Section Twelve (12), Township Seventeen (17) North, Range 19 East of Gila and Salt River Base and Meridian, Arizona, containing 320 acres, United States Patent thereon being of record in the office of the County Recorder of Navajo County, Arizona, in Book 2 of Patents, page 325; acknowledged Nov. 8, 1930, before R. C. Walters, Notary Public Maricopa County, Arizona; filed and recorded at the request of W. D. Nutting Dec. 13, 1930, with the County Recorder of Navajo County, Arizona.

GOVERNMENT'S EXHIBIT 178,

which, abstracted to the issue, is in full substance as follows: Exemplified copy of Warranty Deed executed November 7, 1930, by John McLaws and

(Testimony of Glen O. Perkins.)

Nellie McLaws, his wife, in consideration of \$10.00, to A. W. York, husband of Fannie York, conveying the South Half of the Northwest Quarter; the East Half of the Southwest Quarter; and the West Half of the Northeast Quarter of Section Ten (10), Township 17 North, Range 20 East, Gila and Salt River Base and Meridian, excepting therefrom the Southwest Quarter of the Northwest Quarter and seven (7) acres eighty (80) rods in length running North and South of the West end line of the Southeast Quarter of the Northwest Quarter of said section; and a parcel situated in the Northwest corner of the East Half of the Southwest Quarter of said section, said parcel running approximately 363 feet South and 360 feet East—total exception being 50 acres—total amount 190 acres; also reserving to Hattie M. Dietz the oil and gas rights on sixty acres of the East Half of the Southwest Quarter of Section Ten (10), Township 17 North, Range 20 East, except seven (7) acres in the Northeast corner of said East Half; also the Southwest Quarter of the Northwest Quarter of Section Ten (10), Township 17 North, Range 20 East; also seven (7) acres running North and South on the West end of the Southeast Quarter of the Northwest Quarter of said Section Ten (10), which said sixty acres on which oil and gas rights are reserves commences [451] on the South boundary of the same and extending North in square formation until said sixty acres are covered; acknowledged Nov. 13, 1930, be-

(Testimony of Glen O. Perkins.)

fore R. C. Walters, Notary Public Maricopa County; filed and recorded at request of W. D. Nutting, Dec. 13, 1930, with the County Recorder of Navajo County, Arizona.

Thereupon counsel for the Government read to the jury Government's Exhibits 177, 178, 176, 175, 14, 170 and 172.

JOSEPH PETERSON,

called as a witness on behalf of the Government, testified:

I reside at Joseph City, Arizona, and was residing there during the years 1930 and 1931, and was County Assessor at Holbrook, Navajo County. I was Assessor during 1930 and 1931, and again from 1933 to the close of 1936. I was Deputy Assessor in between at that time. I resided in Navajo County practically all my life. I have dealt in the purchase and sale of those lands during my lifetime. It has been my business to get acquainted with them. I was the Assessor for the County for a number of years. I am acquainted with the property in the East Half of Section 12, Township 17, Range 19 East, containing 320 acres, which was known as the McLaws property. I visited that property personally during 1930 and 1931. I was on the property a number of times and appraised it. From the appraisal of that property in the East Half of Sec-

(Testimony of Joseph Peterson.)

tion 12, Township 17, Range 19 East, known as the McLaws property, in 1930, the value of that property was around Two Fifty an acre. I am acquainted with the property located in Section 10, Township 17, Range 20 East, containing 190 acres, also known as the McLaws property. I personally visited that several times. The market value of that property in 1930 was considered worth about \$10,000. It had a residence building and a well with pumping equipment on it.

Cross Examination

The valuation I placed on these two pieces of property is [452] not based upon assessed valuations. The valuation I gave are actual values, not assessed value, the actual market values. Both of these tracts belonged to John McLaws. They did not adjoin each other. They are separated probably five or six miles. The property situated in the Northeast Quarter of Section 10 covered about 190 acres, and I think there was an extension of some 50 acres specified in the deed. It was valued in 1930 at Two Fifty an acre. That was in Section 12. This is not Section 10 that you speak of. Section 10 is in Township 17 North, Range 20 East. Section 12 is in Township 17, Range 19 East. At the last trial of this case in 1934 I testified with respect to the property situated in the Northeast Quarter of Section 10, Township 17 North. That is Township 10, Section 10, Township 17 North, Range 20, and this property I appraised at Two Fifty an acre. This property

(Testimony of Joseph Peterson.)

in Section 12 I valued at Two Fifty an acre. I placed a valuation of \$10,000 on property located in Section 10, Township 17 North, which comprises 190 acres covered in the deed, and an extension of about 50 acres that is specified in the deed. It is situated about three miles south and west of the town of Holbrook. In 1930 the character of the improvements was a nice residence building, a good well with pumping equipment. This pumping equipment was sufficient to water about 35 or 40 acres of land. The water does not flow over the top, you have to pump it. The lift is about 12 to 15 feet. I believe it is the finest well in that section of the county; as a matter of fact the town of Holbrook purchased that well to use the water for distribution to the town of Holbrook. The town of Holbrook gave \$6000 for that water right only. They also got the residence building in the purchase and five acres of land. It is the best well situated in the vicinity of Holbrook, not the only well. The water from the McLaws well is now used by the Santa Fe Railway to service its locomotive, because of the good character of water. [453]

JOHN C. HOBBS,

recalled as a witness on behalf of the Government,
testified:

Redirect Examination.

That is my signature on Government's Exhibit 13.
The signature upon Government's Exhibit 14 is
J. G. Cash's.

(Testimony of John C. Hobbs.)

Mr. Hardy: (On voir dire examination) That is my signature on Government's Exhibit 13 for identification. It apparently relates to a transaction between December 6th, 1928 and March 5th, 1929, of the Arizona Holding Corporation. I don't know whether I prepared that document or not. I know I signed it. The dates on the document are from December 6th, 1928 until March 5th, 1929. My impression is Mr. Shreve was connected with the Arizona Holding Corporation before March 5th, 1929. I am sure he was not connected with it on December 6th, 1928.

Mr. Hardy: We object to the receipt of Government's Exhibit 13 for identification, for the reason that it appears from the testimony of the witness now on the stand, that neither of the defendants were connected with the Arizona Holding Corporation a corporation named in the document, at some of the time indicated therein.

The Court: What is it, a report to the Corporation Commission?

Mr. Peterson: Yes.

The Court: It may be received.

Mr. Hardy: Exception.

Government's Exhibit 13 was heretofore received in evidence during the testimony of Government's witness Talley.

Mr. Hardy: (The witness continuing) I do not know anything about the report marked Government's Exhibit 14 for identification, except that

(Testimony of John C. Hobbs.)

the signature of J. G. Cash appears thereon.

Mr. Hardy: We object to the receipt of [454] Government's Exhibit 14 for identification in evidence, for the reason that no proper proof of the contents of the exhibit has been made, and no proper foundation has been laid for its admission in evidence. There is nothing to show at this time that either of the defendants had anything to do with the reports or contents thereof, and it is hearsay as to them.

The Court: That document was identified by the custodian of the records, wasn't it?

Mr. Peterson: Yes, sir; identified by the Secretary of the Corporation Commission.

The Court: All right, it may be received.

Mr. Hardy: Exception.

Government's Exhibit 14 was received in evidence during the testimony of Government's witness Talley.

Mr. Peterson: (The witness continuing) That is my signature on Government's Exhibit 159 for identification.

Q. Was that letter mailed in the regular course of business of the Security Building and Loan Association?

Mr. Hardy: We object to that, your Honor. It is incompetent, irrelevant and immaterial, in the regular course of business, and leading.

The Court: He may answer.

Mr. Hardy: Exception.

(Testimony of John C. Hobbs.)

The Witness: Yes, this letter was mailed in the regular course of business.

The witness continuing: Government's Exhibit 159 for identification is signed by me as Vice-President and Secretary of the Building and Loan Association. I don't know that I actually mailed the letter myself. Someone in the office mailed it. I don't recall the details. It is a form letter. I am not cer- [455] tain that the form was prepared or dictated by me. The letter apparently was dictated by me to Mrs. Fricke and signed by me. I could not say as to J. H. Shreve or Archie Shreve assisting in the preparation or the mailing of the letter. Sometimes these form letters came to us in a box or group and we simply mailed them out from Tucson. Sometimes we copied the letter, the letter that was sent us, and mailed them out from there. It would indicate I dictated this letter myself.

Government's Exhibit 159 for identification was offered in evidence.

Mr. Hardy: We object to the introduction of Government's Exhibit 159 for identification, for the reason that no proper foundation has been laid for the admission of the letter as against the defendants now on trial, and the further reason that the letter is hearsay as to them, has not been proved or shown that they were either connected with the preparation, the signing or the mailing of the letter to the addressee therein named. It is incompetent, irrelevant and immaterial.

(Testimony of John C. Hobbs.)

The Court: It may be received.

Mr. Hardy: Exception.

Government's Exhibits 158, 159 and 160 were received in evidence.

GOVERNMENT'S EXHIBIT 158,

which, abstracted to the issue, is in full substance as follows: Envelope post-marked Tucson, Arizona, Jan. 17, 1931, postage stamp affixed, addressed to Mr. Fred Sweetland, Route 2, Box 400-A, Tucson, Arizona.

GOVERNMENT'S EXHIBIT 159,

which, abstracted to the issue, is in full substance as follows: [456] Letter dated January 17, 1931, attached to Exhibit 158, written on the letter-head of Security Building and Loan Association, Tucson, Arizona, signed Security Building & Loan Association by John C. Hobbs, Vice-President, addressed "To You, Our Friend and Customer:" and recites: "It is our pleasure to report to you that our Association made the remarkable gain of over one hundred per cent during 1930. The enclosed statement represents true stability and absolute security. We feel you will be pleased with it and proud to show to to your friends. You already know that this Association pays six per cent on Pass Book Savings, and also that you may deposit or withdraw at any time. Any funds deposited with us are loaned only on monthly payment first mortgages on homes,

(Testimony of John C. Hobbs.)

which is the safest security to be had. This fact, coupled with constant effort toward the maximum of efficiency and service, has been the secret of the success of our Association. We sincerely appreciate your patronage and solicit your friendly cooperation in making 1931 a bigger and better year. Please do not hesitate to call upon us whenever we can serve you."

GOVERNMENT'S EXHIBIT 160,

attached to Government's Exhibits 158 and 159, which is in full substance as follows: "Statement of Condition as of December 31, 1930 Thrift Security Independence 6% Security Building and Loan Association Tucson—107 South Scott St.

Assets

Loans secured by First Mortgages		
on Arizona Real Estate.....	\$322,071.92	
Less Amounts Repaid.....	128,142.46	\$193,929.46
		<hr/>
Loans secured by certificates		
of Association		739.24
Cash on Hand and in Bank.....		12,812.38
Items in process of collection.....		3,016.00
Furniture, Fixtures, Equipment and		
Supplies		6,622.35
Prepaid Insurance		66.67
Other Assets		501.50
Real Estate Owned.....		None
		<hr/>
		\$217,687.60
		[457]

(Testimony of John C. Hobbs.)

Liabilities

Guarantee Capital Paid in.....	\$ 45,000.00
Surplus and Undivided Profits.....	7,719.43
Investment Certificates—	
Pass Book Shares.....	\$97,349.59
Installment Certificates	2,736.32
Full Paid Certificates.....	63,700.00
TOTAL DEPOSITS	163,785.91
Loan Commitments	1,182.26
Borrowed Money	None
	<hr/>
	\$217,687.60

The objections made by counsel for the defendants to Government's Exhibit 159 were permitted by the Court to also apply to Government's Exhibits 158 and 160.

Q. (Mr. Peterson) I hand you Government's Exhibit for identification 164 and ask you what the custom in mailing out those letters was, and if you recognize the signature on that letter?

Mr. Hardy: Just a moment, we would like to see the exhibit before he answers. With reference to this Government's Exhibit 164 for identification, Mr. Peterson, you are now asking Mr. Hobbs what the custom was in regard to mailing it out?

Mr. Peterson: Yes, sir; mailing letters of that type out.

Mr. Hardy: We object, first, because the letter is not in evidence, therefore, no testimony with respect to a custom concerning the letter is now admissible, and the additional reason that a custom is irrelevant, incompetent and immaterial.

(Testimony of John C. Hobbs.)

The Court: He may answer.

Mr. Hardy: Exception.

The witness continuing: In the case of these dividend letters, I think they were generally prepared in the Phoenix office [458] and mailed to us in a batch, and we addressed them to the proper people and mailed them out to our stockholders in Tucson. Sometimes those letters were signed when they left Phoenix, sometimes I signed them down there. I recognize the signature upon the exhibit I hold in my hand. It is the signature of D. H. Shreve. I don't recall Mr. Shreve signing those letters in the Tucson office.

Q. Was it the custom to receive those letters signed by Mr. Shreve in Phoenix and then mailed out of your office?

Mr. Hardy: We object to the question, as to the custom. It is irrelevant, immaterial and no foundation has been laid for the custom.

The Court: He may answer.

Mr. Hardy: Exception.

The witness continuing: Stockholders' letters were mailed from Phoenix and were usually signed in Phoenix and we simply addressed the envelopes in the Tucson office and put them in the mail there. Government's Exhibit 164 for identification, which I hold in my hand, is the class of letters I have just testified in regard to. Government's Exhibit 179 for identification is the same type of letter, is one of the dividend letters which I testified in re-

(Testimony of John C. Hobbs.)

gard to. D. H. Shreve's signature is on that letter. Government's Exhibit 181 for identification, being a letter, and 182, is one of the type of form letters I have testified in regard to. Government's Exhibit 183 for identification, being a letter, and 184, being an envelope, is the type of dividend letters which I have testified in regard to.

The Clerk: You have 183, which was just marked for identification, is the same as 169 which has been heretofore marked for identification, and 184 which was just marked for identification is the same as 168 which has heretofore been marked for [459] identification. 183 and 184 will not be assigned as any more exhibits. There was some testimony about 183 and 184, so we can't assign those numbers to any other exhibits.

The witness continuing: Government's Exhibits 148-A and 148 for identification, were ads of the Security Building and Loan Association and run in the Tucson Daily Citizen from time to time. I prepared some of them. After a time, the advertising we ran in the Tucson papers came to us in the form of mats from Phoenix. We simply inserted them in the papers there. There was a time I prepared the ads myself. The ads started coming from Phoenix after the Phoenix office opened. I probably did have discussion with either J. H. Shreve or Archie Shreve about ads that were placed in the Tucson Citizen. When we opened the Building & Loan Association, J. H. Shreve told me he needed to do

(Testimony of John C. Hobbs.)

some advertising. I don't recall just what the conversation was, but I know there was a period of time I prepared the advertising and put it in the papers. I think J. H. Shreve helped me write the first ad, or he wrote it, that is, to get me started on the idea the way the ads should be written. I caused the ad which is Government's Exhibit 151 and 151-A for identification to be placed in the Tucson Citizen, as I did Government's Exhibit 152 for identification. I don't know whether that ad came from the Phoenix or Tucson office. I think I was the only one that ever placed ads in the Tucson paper for the Security Building & Loan Association. J. H. Shreve and A. C. Shreve visited the office of the Security Building & Loan Association many times during the period I was employed by the Security Building & Loan Association. I know that we talked about the business of the Security Building & Loan Association many times when they came.

Cross Examination

I know that D. H. Shreve came over the early part of 1930 and took over the conduct of the Security Building & Loan Associa- [460] tion, and also the other two companies, Arizona Holding Corporation and Century Investment Trust, and from that time on the business affairs of those corporations were discussed and transacted in the main between me and D. H. Shreve. As far as I was

(Testimony of John C. Hobbs.)

concerned D. H. Shreve became the active head of the business when he came over in the early part of the spring of 1930. As far as I was concerned I was in charge of the affairs and the business of the Tucson office, and I took my instructions thenceforward from D. H. Shreve. Government's Exhibit 164 for identification is signed by D. H. Shreve, meaning Daniel H. Shreve. That is D. H. Shreve's signature on that letter. It is a form for mimeographed letter. It was the custom for Dan Shreve to send form letters from the Phoenix office for mailing from the Tucson office. I do not know who actually mailed this letter which is marked Government's Exhibit 164 for identification. It was just mailed in the ordinary course of business of the Century Investment Trust at Tucson. I don't believe that form was available to any person upon the counter of the company at Tucson. I do not actually know who mailed this letter marked Government's Exhibit 164 for identification. I know it was the custom to mail that type of letter from the Tucson office. As a rule Mrs. Fricke took care of our mail there; that is the actual mechanical handling of it. J. H. Shreve and A. C. Shreve didn't do the mailing down there. I know that Government's Exhibit 164 is the type of letter that was mailed from the Tucson office. Government's Exhibit 179 for identification is a letter signed by D. H. Shreve, and also Government's Exhibit 181 for identification. They are form letters and it was

(Testimony of John C. Hobbs.)

the practice to mail them to me at Tucson from the Phoenix office, and then in turn the Tucson office would mail these letters out to whomsoever they were addressed. I don't know personally whether either of these letters identified as Government's Exhibits 179 to 181 for identification were ever mailed from the Tucson office. Government's Exhibit 183 for identification is a letter signed by Glen O. [461] Perkins. He was the same person I testified came over to Arizona and participated in the organization of the Arizona Holding Corporation with Mr. James, Dr. Thomas and Dr. Morris. That is his signature upon letter marked Government's Exhibit 183 for identification. That letter apparently was mailed from Tucson. The envelope has a Tucson post mark. I do not know personally who mailed that letter. I do not know the exact time D. H. Shreve came here but I do know that after he came, as far as I was concerned, he was in charge of the company, and that would be up to the time the companies closed. I have no way of fixing the time that Dan Shreve came over. The only way I could fix it was in the order or sequence in which the various Mr. Shreves were in Arizona. Jesse was the first one, Archie was the next one and Dan was the last one. With regard to the ads appearing in the Tucson Citizen, I said it was the practice in the beginning for me to prepare the ads, and after the opening of the Phoenix office these mats were forwarded to us in Tucson and we would

(Testimony of John C. Hobbs.)

insert them in the papers there. I know that I negotiated the advertising contract with the Tucson Citizen and took care of it. We advertised also in the Arizona Daily Star. I signed contract with both of these papers for the advertising of the Security Building & Loan Association, and negotiated the advertising. I had nothing to do with any advertising in the Phoenix papers or advertisements prepared in Phoenix for use in Tucson. After Dan Shreve came over all correspondence, including the mailing of letters, was done by me or under my charge in Tucson by the direction of Dan Shreve.

Redirect Examination

Letters of the Security Building & Loan Association were mailed from the Tucson post office. I never attended a directors meeting of the Security Building & Loan Association in which I was elected an officer of the corporation.

Mr. Peterson: Your Honor, at this time we offer in evidence Government's Exhibits 168 and 169, [462] being a letter and an envelope identified by the witness, Harry Nelson, as having been received and identified by Mr. Hobbs as mailed in the custom of the office, being a letter headed, "Century Investment Trust——"

Mr. Hardy: We object to the receipt of the Government's Exhibits Nos. 168 and 169 in evidence for the reason that as yet no foundation has been laid for the admission of the exhibits in evidence as

(Testimony of John C. Hobbs.)

against the defendants J. H. Shreve and A. C. Shreve, for the reason it discloses upon the face thereof it is signed by one Glen O. Perkins; and for the further reason that there is no testimony yet produced that either of the defendants on trial had anything whatsoever to do with the preparation or the mailing of the letters; that the envelope and the letter embraced by those exhibits are hearsay as to them, are irrelevant, incompetent and immaterial as to the defendants on trial; and that the testimony of the Government now affirmatively shows neither of the said defendants had anything to do with the preparation and the mailing of the letters embraced by said exhibits.

The Court: They may be received.

Mr. Hardy: Exception.

Government's Exhibits 168 and 169 were received in evidence.

GOVERNMENT'S EXHIBIT 168,

which, abstracted to the issue, is in full substance as follows: Envelope addressed to Mr. Harry Nelson and Mrs. Anna B. Nelson, 121 W. 17th St., Tucson, Arizona, post-marked Tucson, Arizona, Jan 5, 1931, postage stamp affixed; pencil notation "H. N."

[463]

GOVERNMENT'S EXHIBIT 169,

being letter written on stationery of Century Investment Trust, Phoenix, Arizona, Jan. 2, 1931, addressed to Mr. Harry Nelson and Mrs. Anna B.

(Testimony of John C. Hobbs.)

Nelson, 121 W. 17th St., Tucson, Arizona, signed Century Investment Trust by Glen O. Perkins, which is in full substance as follows: "Herewith we hand you dividend check on your preferred stock of Century Investment Trust. We are very happy to be able to pay you this dividend in the face of financial conditions over the country. The Century Investment Trust has had a good year and the Directors believe that our loyal stockholders have been of great help. As you know, one of our sources of income is through the Security Building & Loan Association, which has made an excellent growth during the past year. We ask that you extend to the Security Building & Loan Association a helping hand, and this may be done by depositing your funds or by encouraging your friends and acquaintances to open accounts. We write all lines of insurance, and if you have not already placed yours with the Company we would be glad to handle it for you. Wishing you a Happy and Prosperous New Year, we are sincerely yours, Encl. 1."

Mr. Peterson: I offer in evidence at this time Government's Exhibit 164 for identification, being identified by the witness R. R. Guthrie as having been received through the United States Mail, dated April 14th, 1931, and further identified by the witness Hobbs, John Hobbs, as having been mailed in the regular custom of the office.

Mr. Hardy: We object of the receipt in evidence of Government's Exhibit No. 164, for the same rea-

(Testimony of John C. Hobbs.)

sons as we objected to the receipt in evidence of Government's Exhibits No. 168 and 169, and for the further reason that evidence of the receipt of this exhibit is not sufficient to prove [464] the mailing of the exhibit by either of the defendants now on trial, or their participation in the mailing of them.

The Court: It may be received.

Mr. Hardy: Exception.

Government's Exhibit 164 was received in evidence.

GOVERNMENT'S EXHIBIT 164,

being letter written on stationery of Century Investment Trust, dated Phoenix, Arizona, April 14, 1931, addressed to "Stockholders" signed by Century Investment Trust by D. H. Shreve, which is in full substance as follows: "Enclosed you will find your dividend check for the first quarter of 1931. The checks are fifteen days late for which we are sorry, but we feel that every stockholder will appreciate the checks in face of general conditions, when but few companies are able to pay dividends. It is a source of much satisfaction to know that the stockholders of the Century Investment Trust are loyally assisting the Company. Many are using the Security Building & Loan Association, thus helping to build up this splendid association. Many of you have given us insurance and have directed your friends to us. We have installed a regular Insurance Department, writing all lines of insurance such as fire,

(Testimony of John C. Hobbs.)

automobile, life, burglary, etc. With the able assistance of every stockholder, this department can be made to pay the entire overhead of the Company. Thanking you for your loyalty and wishing you success, we are Yours very truly.”

Thereupon counsel for the Government offered in evidence Government’s Exhibit 179 for identification, being a letter, and Government’s Exhibit 180 for identification, being an envelope. The objection to their admission by counsel for the defendants was sustained.

Thereupon counsel for the Government offered in evidence Government’s Exhibits 181 and 182, being a letter and an envelope [465] addressed to Lulu Gatlin. The objection to their admission by counsel for the defendants was sustained.

The foregoing Exhibits 179 and 180, 181 and 182 for identification are the identical letters and envelopes set forth in Counts Ten and Eleven of the indictment.

R. F. WATT,

recalled as a witness on behalf of the Government, testified:

Redirect Examination

The signatures upon Government’s Exhibit 79 for identification, being a check, are the signatures of D. H. Shreve and R. F. Watt.

Mr. Peterson: We offer Government’s Exhibit 79 for identification in evidence.

(Testimony of R. F. Watt.)

Mr. Hardy: We object to the receipt of it in evidence, your Honor, because no foundation has been laid for its admission, it appearing that it is a check signed by the Security Building and Loan Association by D. H. Shreve and R. F. Watt. No connection to the defendants now on trial having been proved in connection with the transaction evidenced by the exhibit.

The Court: It may be received.

Mr. Hardy: An exception.

Government's Exhibit 79 was received in evidence.

GOVERNMENT'S EXHIBIT 79,

which, abstracted to the issue, is in full substance as follows: Check of Security Building and Loan Association signed by D. H. Shreve and R. F. Watt, dated December 31, 1930, payable to Jas. M. Shumway for \$2715.00; endorsed Jas. M. Shumway, R. F. W., Century Investment Trust.

The witness continuing: That check was made to James M. Shumway, in the amount of \$2715.00. It is endorsed "James M. Shumway by R. F. W." The "R. F. W." is I. The other endorsement is that of [466] Century Investment Trust. The signature upon Government's Exhibit 80 for identification, being a check, are the signatures of D. H. Shreve and R. F. Watt.

Mr. Peterson: We offer Government's Exhibit 80 for identification in evidence.

(Testimony of R. F. Watt.)

Mr. Hardy: The same objection as we made to Government's Exhibit 79.

The Court: The same ruling.

Mr. Hardy: Exception.

Government's Exhibit 80 was received in evidence.

GOVERNMENT'S EXHIBIT 80,

which, abstracted to the issue, is in full substance as follows: Check of Security Building and Loan Association signed by D. H. Shreve and R. F. Watt, dated Dec. 27, 1930, payable to Jas. A. Shumway, for \$7000.00; endorsed Jas. A. Shumway "W" Century Investment Trust.

The witness continuing: That check was made to James M. Shumway in the amount of \$7000. I endorsed it, James M. Shumway by "W". The other endorsement is that of the Century Investment Trust. I recognize the signature upon Government's Exhibit 112 for identification, being a check, as the signatures of R. F. Watt and E. F. Young.

Mr. Peterson: We offer Government's Exhibit 112 for identification in evidence.

Mr. Hardy: The same objection to the receipt of the exhibit in evidence that we made to the receipt in evidence of Government's Exhibit 79.

The Court: Same ruling.

Mr. Hardy: Exception.

Government's Exhibit 112 was received in evidence.

(Testimony of R. F. Watt.)

Government's Exhibit 112 had been previously received in evidence during the testimony of the witness Young when recalled as a witness on behalf of the Government.

The witness continuing: That check is made to A. W. York, for \$3000. I endorsed it, A. W. York by R. F. W. The other endorsement was of the Arizona Holding Corporation by R. F. Watt, and Century Investment Trust. The signatures upon Government's [467] Exhibit 111-B and 111-C for identification, being checks, are the signatures of D. H. Shreve and R. F. Watt. The signatures upon Government's Exhibit 111 for identification, being a check, are the signatures of E. F. Young and R. F. Watt.

Mr. Peterson: We offer in evidence at this time Government's Exhibit 111 for identification, 111-B and 111-C.

Mr. Hardy: Object to their receipt in evidence upon the same grounds that we objected to Government's Exhibit 179.

The Court: Same ruling.

Mr. Hardy: Exception.

Government's Exhibits 111, 111-B and 111-C were received in evidence.

GOVERNMENT'S EXHIBIT 111,

which, abstracted to the issue, is in full substance as follows: Check No. 808 dated January 12, 1931, for \$3000.00, issued by Security Building and Loan As-

(Testimony of R. F. Watt.)

sociation to Century Investment Trust, drawn on Commercial National Bank, Phoenix, signed E. F. Young and R. F. Watt, endorsed Century Investment Trust.

GOVERNMENT'S EXHIBIT 111-B,

which, abstracted to the issue, is in full substance as follows: Check No. 870 dated January 30, 1931, for \$1696.66, issued by Security Building and Loan Association to Valley Bank & Trust Company and E. A. Marshall, drawn on Commercial National Bank, Phoenix, signed D. H. Shreve and R. F. Watt, endorsed The Valley Bank and E. A. Marshall.

GOVERNMENT'S EXHIBIT 111-C,

which, abstracted to the issue, is in full substance as follows: Check No. (unintelligible) dated January 3, 1931, for \$64.54, [468] issued by Security Building and Loan Association to John D. Calhoun, County Treasurer, drawn on Commercial National Bank, Phoenix, signed D. H. Shreve and R. F. Watt, endorsed John D. Calhoun, County Treasurer.

The witness continuing: The check, being Government's Exhibit 111-D, was made to James M. Shumway in the amount of \$350. I endorsed the check James M. Shumway by R. F. W. The other endorsement is Century Investment Trust. The face of the check is signed R. F. Watt and E. F. Young. The signatures appearing on Government's Exhibit

(Testimony of R. F. Watt.)

189 for identification, being a check, are the signatures of D. H. Shreve and R. F. Watt.

Mr. Peterson: We offer Government's Exhibit 185 for identification in evidence.

Mr. Hardy: We object to the receipt of Government's Exhibit No. 185 for identification in evidence, for the reason we objected to the receipt in evidence of Government's Exhibit No. 79, and for the additional reason that it is hearsay as to these defendants on trial, the witness having testified the check was signed by D. H. Shreve and himself.

The Court: It may be received.

Mr. Hardy: Exception.

Government's Exhibit 185 was received in evidence.

GOVERNMENT'S EXHIBIT 185,

which, abstracted to the issue, is in full substance as follows: Check No. 714 dated December 15, 1930, for \$7500.00, issued by Security Building and Loan Association, 117 N. Central Ave., Phoenix, Arizona, to A. W. York, drawn on Commercial National Bank of Phoenix, Phoenix, Arizona, signed D. H. Shreve and R. F. Watt endorsed A. W. York W Arizona Holding Corporation R. F. Watt Century Investment Trust; perforated Paid 12-15-30. [469]

The witness continuing: That check was drawn to A. W. York, in the amount of \$7500. I endorsed it A. W. York by "W". The other endorsements are Arizona Holding Corporation by R. F. Watt and

(Testimony of R. F. Watt.)

Century Investment Trust. The signatures on Government's Exhibit 186 for identification, being a check, are the signatures of D. H. Shreve and R. F. Watt.

Mr. Peterson: We offer Government's Exhibit 186 for identification in evidence.

Mr. Hardy: I make the same objection as we made to Government's Exhibits 79 and 186 and 185.

The Court: The same ruling.

Mr. Hardy: Exception.

Government's Exhibit 186 was received in evidence.

GOVERNMENT'S EXHIBIT 186,

which, abstracted to the issue, is in full substance as follows: Check dated December 27, 1930, for \$650.00, issued by Security Building and Loan Association, 117 N. Central Ave., Phoenix, Arizona, to A. W. York, drawn on Commercial National Bank of Phoenix, Phoenix, Arizona, signed by D. H. Shreve and R. F. Watt, endorsed A. W. York R.F.W. Arizona Holding Corporation R. F. Watt Century Investment Trust; perforated Paid 12-27-30.

The witness continuing: The check was made to A. W. York for \$650.00. The endorsement on that check is A. W. York by R. F. Watt, Arizona Holding Corporation, by R. F. Watt, Century Investment Trust. I made the original endorsement of A. W. York. I am not sure I recognize the signatures

(Testimony of R. F. Watt.)

on the check which is Government's Exhibit 187 for identification. I recognize the other as the signature of Glen O. Perkins. I can't be positive that I recognize the bottom signature. I am not sure that I can positively identify the signatures upon check which is Government's Exhibit 188 for identification. They look familiar to me but I am not positive that I can identify them. I know whose signatures they appear [470] to be. I can't make a positive identification of either one of them. I recognize the signatures of Glen O. Perkins and D. H. Shreve on Government's Exhibit 190 for identification.

Mr. Peterson: We offer Government's Exhibit 190 for identification in evidence.

Mr. Hardy: We object to the introduction of Government's Exhibit 190 for identification, for the same reasons as we objected to the introduction in evidence of Government's Exhibit No. 79.

The Court: It may be received.

Mr. Hardy: Exception.

Government's Exhibit 190 was received in evidence.

GOVERNMENT'S EXHIBIT 190,

which, abstracted to the issue, is in full substance as follows: Check No. 5230 dated Phoenix, Arizona, July 23, 1930, issued by Security Building and Loan Association by Glen O. Perkins and D. H. Shreve, to Century Investment Trust, for \$1250.00, drawn on Citizens State Bank, Phoenix, Arizona, endorsed

(Testimony of R. F. Watt.)

Century Investment Trust; perforated Paid 7-23-30.

The witness continuing: The signatures of Glen O. Perkins and D. H. Shreve are on check which is Government's Exhibit 191 for identification.

Mr. Peterson: We offer Government's Exhibit 191 for identification in evidence.

Mr. Hardy: The same objection.

The Court: The same ruling.

Mr. Hardy: Exception.

Government's Exhibit 191 was received in evidence.

GOVERNMENT'S EXHIBIT 191,

which, abstracted to the issue, is in full substance as follows: Check No. 22 dated Phoenix, Arizona, July 23, 1930, issued by [471] Security Building and Loan Association by Glen O. Perkins and D. H. Shreve, to Century Investment Trust, for \$4100.00, drawn on First National Bank, Prescott, Arizona, endorsed Pay to order of First National Bank, Prescott, Arizona, for deposit Century Investment Trust; perforated Paid 7-24-30.

The signatures upon check which is Government's Exhibit 192 for identification are the signatures of Glen O. Perkins and D. H. Shreve.

Mr. Peterson: We offer in evidence Government's Exhibit 192.

Mr. Hardy: Same objection.

The Court: The same ruling.

(Testimony of R. F. Watt.)

Government's Exhibit 192 was received in evidence.

GOVERNMENT'S EXHIBIT 192,

which, abstracted to the issue, is in full substance as follows: Check No. 5210, dated Phoenix, Arizona, July 18, 1930, issued by Security Building and Loan Association by Glen O. Perkins and D. H. Shreve, payable to Yavapai County Savings Bank, for \$50.00, drawn on Citizens State Bank, Phoenix, Arizona; endorsed Yavapai County Savings Bank, Phoenix, Arizona; perforated Paid 7-22-30.

The witness continuing: The signatures upon check which is Government's Exhibit 193 for identification, are the signatures of D. H. Shreve and Glen O. Perkins.

Mr. Peterson: We offer Government's Exhibit 193 for identification in evidence.

Mr. Hardy: Same objection.

The Court: Same ruling.

Mr. Hardy: Exception.

Government's Exhibit 193 was received in evidence.

GOVERNMENT'S EXHIBIT 193,

which, abstracted to the issue, is in full substance as follows: [472] Check No. 41, dated Phoenix, Arizona, December 20, 1930, issued by Security Building and Loan Association by D. H. Shreve and Glen O. Perkins, payable to Walter McLaws, for \$75.00,

(Testimony of R. F. Watt.)

drawn on First National Bank, Prescott, Arizona; endorsed Walter McLaws and Security Building and Loan Association; perforated Paid 12-26-30.

The witness continuing: The signatures upon check which is Government's Exhibit 194 for identification, are the signatures of D. H. Shreve and R. F. Watt.

Mr. Peterson: We offer Government's Exhibit 194 for identification in evidence.

Mr. Hardy: Same objection.

The Court: Same ruling.

Mr. Hardy: Exception.

Government's Exhibit 194 was received in evidence.

GOVERNMENT'S EXHIBIT 194,

which, abstracted to the issue, is in full substance as follows: Check No. 507, dated Phoenix, Arizona, October 14, 1930, drawn by Security Building and Loan Association by D. H. Shreve and R. F. Watt, payable to Century Investment Trust, for \$150.00, drawn on Commercial National Bank, Phoenix, Arizona; endorsed Century Investment Trust by R. F. Watt, Security Building and Loan Association; perforated Paid 10-14-30.

The witness continuing: The signatures upon check which is Government's Exhibit 195 for identification, are the signatures of D. H. Shreve and R. F. Watt.

Mr. Peterson: We offer them in evidence.

(Testimony of R. F. Watt.)

Mr. Hardy: The same objection.

The Court: The same ruling.

Mr. Hardy: Exception.

Government's Exhibit 195 was received in evidence. [473]

GOVERNMENT'S EXHIBIT 195,

which, abstracted to the issue, is in full substance as follows: Check No. 1538, dated Phoenix, Arizona, July 29, 1930, drawn by Security Building and Loan Association by D. H. Shreve and R. F. Watt, payable to John D. Calhoun, County Treas., for \$52.12, drawn upon Arizona Bank of Phoenix, Arizona; endorsed John D. Calhoun, County Treasurer, ex-officio Tax Collector of Maricopa County; perforated Paid 8-1-31.

The witness continuing: The signatures upon check which is Government's Exhibit 196 for identification are the signatures of D. H. Shreve and Glen O. Perkins.

Mr. Peterson: We offer Government's Exhibit 196 for identification in evidence.

Mr. Hardy: Same objection.

The Court: The same ruling.

Government's Exhibit 196 was received in evidence.

GOVERNMENT'S EXHIBIT 196,

which, abstracted to the issue, is in full substance as follows: Check No. 40, dated Phoenix, Arizona, December 20, 1930, drawn by Security Building and

(Testimony of R. F. Watt.)

Loan Association by D. H. Shreve and Glen O. Perkins, payable to Walter McLaws, for \$425.00, drawn on First National Bank, Prescott, Arizona; endorsed Walter McLaws; perforated Paid 12-28-30.

The witness continuing: The signatures upon check which is Government's Exhibit 197 for identification, are the signatures of R. F. Watt and Glen O. Perkins.

Mr. Peterson: We offer Government's Exhibit 197 for identification in evidence.

Mr. Hardy: Same objection.

The Court: The same ruling.

Mr. Hardy: Exception.

Government's Exhibit 197 was received in evidence. [474]

GOVERNMENT'S EXHIBIT 197,

which, abstracted to the issue, is in full substance as follows: Check No. 1427, dated Phoenix, Arizona, July 3, 1931, issued by Security Building and Loan Association by R. F. Watt and Glen O. Perkins, payable to Arizona Title Guaranty & Tr. Co., for \$400.00, drawn on Arizona Bank of Phoenix, Arizona; endorsed Arizona Title Guaranty & Tr. Co.; perforated Paid 7-10-31,

The witness continuing: The signatures upon Government's Exhibit 198, being a check, are R. F. Watt and Glen O. Perkins.

Mr. Peterson: We offer Government's Exhibit 198 in evidence.

(Testimony of R. F. Watt.)

Mr. Hardy: Same objection.

The Court: The same ruling.

Mr. Hardy: Exception.

Government's Exhibit 198 was received in evidence.

GOVERNMENT'S EXHIBIT 198,

which, abstracted to the issue, is in full substance as follows: Check No. 1067, dated Phoenix, Arizona, March 23, 1931, drawn by Security Building and Loan Association by R. F. Watt and Glen O. Perkins, payable to Arizona Savings Bank & Trust Company, for \$2164.47, drawn on Commercial National Bank, Phoenix, Arizona; endorsed Phoenix Savings Bank & Trust Co.; perforated Paid 3-24-31.

The witness continuing: The signatures upon check which is Government's Exhibit 199 for identification, are the signatures of D. H. Shreve and R. F. Watt.

Mr. Peterson: We offer this exhibit in evidence.

Mr. Hardy: The same objection.

The Court: The same ruling.

Mr. Hardy: Exception.

Government's Exhibit 199 was received in evidence. [475]

GOVERNMENT'S EXHIBIT 199,

which, abstracted to the issue, is in full substance as follows: Check No. 1168, dated Phoenix, Arizona, April 17, 1931, drawn by Security Building and Loan

(Testimony of R. F. Watt.)

Association by D. H. Shreve and R. F. Watt, payable to J. W. McLaws, for \$150.00, drawn on Commercial National Bank, Phoenix, Arizona; endorsed John W. McLaws; perforated Paid 4-18-31.

The witness continuing: The signatures upon which *which* is Government's Exhibit 200 for identification, are the signatures of R. F. Watt and D. H. Shreve.

Mr. Peterson: We offer Government's Exhibit 200 for identification in evidence.

Mr. Hardy: The same objection.

The Court: The same ruling.

Mr. Hardy: Exception.

Government's Exhibit 200 was received in evidence.

GOVERNMENT'S EXHIBIT 200,

which, abstracted to the issue, is in full substance as follows: Check No. 1168, dated Phoenix, Arizona, April 15, 1931, drawn by Security Building and Loan Association by R. F. Watt and D. H. Shreve, payable to Century Investment Trust, for \$1758.31, drawn on Commercial National Bank, Phoenix, Arizona; endorsed Century Investment Trust; perforated Paid 4-15-31.

The witness continuing: The signatures upon check which is Government's Exhibit 201 for identification, are the signatures of R. F. Watt and D. H. Shreve.

Mr. Peterson: We offer Government's Exhibit 201 for identification in evidence.

(Testimony of R. F. Watt.)

Mr. Hardy: Same objection.

The Court: The same ruling.

Mr. Hardy: Exception.

Government's Exhibit 201 was received in evidence. [476]

GOVERNMENT'S EXHIBIT 201,

which, abstracted to the issue, is in full substance as follows: Check No. 1218, dated Phoenix, Arizona, May 1, 1931, drawn by Security Building and Loan Association by R. F. Watt and D. H. Shreve, payable to Jas. M. Shumway, for \$260.95, drawn on Arizona National Bank, Phoenix, Arizona; endorsed Jas. M. Shumway; perforated Paid 5-6-31.

The witness continuing: The signatures upon check which is Government's Exhibit 202 for identification, are the signatures of D. H. Shreve and R. F. Watt.

Mr. Peterson: We offer Government's Exhibit 202 in evidence.

Mr. Hardy: Same objection.

The Court: The same ruling.

Mr. Hardy: Exception.

Government's Exhibit 202 was received in evidence.

GOVERNMENT'S EXHIBIT 202,

which, abstracted to the issue, is in full substance as follows: Check No. 49, dated Phoenix, Arizona, January 9, 1931, drawn by Security Building and

(Testimony of R. F. Watt.)

Loan Association by D. H. Shreve and R. F. Watt, payable to J. W. McLaws, for \$1,000.00, drawn on First National Bank, Prescott, Arizona; endorsed J. W. McLaws; perforated Paid 1-27-31.

The witness continuing: I signed the slip enclosure in the envelope marked Government's Exhibit 161 for identification. That enclosure was mailed in that envelope in the general course of business of the Security Building and Loan Association.

Mr. Hardy: We object to that, your Honor. There is not sufficient proof of the mailing.

The Court: Well, he may answer.

The Witness: Yes, sir; it was. [477]

The witness continuing: I recall making that slip myself, and that is my signature on it.

Mr. Peterson: We offer Government's Exhibit 161 in evidence.

Mr. Hardy: (On voir dire examination) Government's Exhibit 161 for identification is a duplicate slip. It is all in my handwriting. I do not know that I addressed the envelope. It is typewritten, I could not tell. Neither of these defendants had anything to do directly with the preparation or mailing of Exhibit 161 for identification. This is the ordinary form of deposit slip which was mailed out to depositors of the Security Building & Loan Association.

Government's Exhibit 161 was received in evidence.

(Testimony of R. F. Watt.)

GOVERNMENT'S EXHIBIT 161,

which, abstracted to the issue, is in full substance as follows: Envelope addressed to Rev. O. Hohenstein, Glendale, Arizona, postmarked Phoenix, Arizona, October 24, 1931, postage stamp affixed, to which is attached deposit slip No. 6154 of Security Building and Loan Association, Phoenix, Arizona, to O. Hohenstein, Gdn., dated October 24, 1931, disclosing interest credit \$5.84 on certificate B-141, Total \$5.84—Balance \$385.11 deposit \$5.84—New balance \$390.95; stamped duplicate by R. F. Watt.

The witness continuing: The series of debit and credit tickets marked Government's Exhibit 203 for identification are all records of the Security Building and Loan Association. Those were made in the regular order of business.

(Thereupon the series of debit and credit tickets marked Government's Exhibit 203 for identification were offered in evidence by counsel for the Government, as one exhibit.)

The Court: What are those memorandums, Mr. Watt?

The Witness: They are debits and withdrawal [478] slips, sir, and general debit and credit tickets.

Q. And it was in the regular order of the business of the Company to make those?

A. Yes, sir.

Mr. Hardy: (On voir dire examination) These slips are not all made by me. Some of them were

(Testimony of R. F. Watt.)

made by Dan Shreve, some by Dorothy Harrison, and some by E. F. Young. Some of these were made before I went to work for the Security Building and Loan Association. I am not sure whether those were correct or not or that they were made in the ordinary or regular course of business of the Security Building and Loan Association. Some of those I know were traced back when I was working on the books of the other companies. I do not know of my own knowledge because I was not there at the time. Some of these slips represent transactions which occurred before I went to work for the Security Building and Loan Association and of which I have no personal knowledge. I am sure those tickets were all made in the regular course of business. Not very many of them were made by someone else. Some were made by Miss Young, some by Dan Shreve, and some by Miss Harrison. I might know something about the transactions if I examined each one carefully, but it would be what somebody else told me or what somebody else has done.

Mr. Hardy: We object to the introduction upon the grounds that they have not been properly identified by the persons who made them. All of them have not been properly identified by the persons who made them, no proper foundation has been laid for the admission as against these defendants, and for the additional reason that it appears that some of the slips were made by D. H. Shreve, a person now deceased, and a person whom we have

(Testimony of R. F. Watt.)

not had the opportunity to cross examine, nor whom we now have an opportunity to cross examine with regard [479] to the transactions recorded or made by him. For the further reason that it is hearsay as to these defendants, incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Hardy: Exception.

Government's Exhibit 203 was received in evidence.

GOVERNMENT'S EXHIBIT 203,

which, abstracted to the issue, is in full substance as follows: 4 deposit slips of Security Building and Loan Association, Phoenix, Arizona, each numbered 5618, showing deposits of Arizona Holding Corporation of \$126.05 on April 20, 1931, \$256.06 on August 10, 1931, \$6,222.00 on June 30, 1931, \$1,816.75 on September 5, 1931; also series of debit and credit slips of Security Building and Loan Association, disclosing Dec. 15, 1930, credit to Loan Fees, \$250.00, York Loan No. 37, signed by R. F. W.; Dec. 15, 1930, debit Incomplete Loans Loan Fees \$250.00 and \$7,500.00, total \$7,750.00, York Loan No. 37, signed by R. F. W., notation Ck 714 Com. Nat. Bk; Dec. 21, 1930, debit Loans on Real Estate \$11,800.00, Jas. M. Shumway No. 38, Lot 3, Block 2, Goldman's Add. Tempe, signed R. F. W.; Dec. 20, 1930, credit Incomplete Loans \$11,800.00, Jas. M. Shumway No. 38, signed R. F. W.; Dec. 31,

(Testimony of R. F. Watt.)

1930, debit Incomplete Loans \$2,715.00, Shumway No. 38, signed R. F. Watt; Dec. 31, 1930, debit Incomplete Loans \$2,085.00, Shumway No. 38, signed R. F. W.; Jan. 3, 1930, Incomplete Loans \$52.65, York No. 37, signed R. F. W.; Dec. 31, 1930, debit Incomplete Loans \$438.67, Arrington No. 39, signed R. F. W.; Receipt #5226, dated Phoenix, Arizona, Dec. 31, 1930, acknowledging receipt by Century Investment Trust by R. F. Watt, for Security Building and Loan Association, Phoenix, Arizona, \$5,745.29, cites new P. B. Bal. \$52,479.87; Receipt #5226, dated Phoenix, Arizona, Dec. 31, 1930, acknowledging receipt by Century Investment Trust by R. F. Watt, for Security Building and Loan [480] Association, Phoenix, Arizona, \$2,661.63, new P. B. Bal. \$9,828.24; debit slip Dec. 31, 1930, Incomplete Loans \$2500.00, Rayburn No. 27, signed R. F. Watt; debit Dec. 31, 1930, Incomplete Loans \$31,360.00, Dreyfus No. 41, R. F. W.; Debit Dec. 31, 1930, Incomplete Loans \$33,320.00, Arrington No. 42, signed R. F. W.; debit May 2, 1930, New Accounts Expense \$120.95, Shumway, see check \$5131, signed R. F. Watt; credit May 18, 1931, Loans Repaid \$4,530.60, interest \$19.03, total \$45,049.63, Rayburn No. 26, signed R. F. W.; credit May 2, 1931, Loans Repaid \$37.29, interest \$32.71, total \$70.00, York No. 19, signed R. F. W.; credit May 1, 1931, Loans Repaid \$45.76, interest \$79.24, total \$125.00, York No. 37, signed R. F. Watt; credit May 29, 1931, Loans Repaid \$72.68, interest \$52.32,

(Testimony of R. F. Watt.)

total \$125.00, Shumway No. 44, signed R. F. W.; credit May 29, 1931, Realty S. P. Loans Repaid \$37.55, interest \$52.45, total \$70.00, York No. 19, signed R. F. W.; debit Feb. 2, 1931, Incomplete Loans \$1,802.80, Shumway No. 44, signed R. F. Watt; credit Feb. 2, 1931, Real Estate Loans Repaid \$44.81, interest \$80.19, total \$125.00, York No. 37, signed R. F. W.; thereafter continues a series of deposit slips of Security Building and Loan Association Nos. 5618, 5226, showing various deposits to the pass book account of Arizona Holding Corporation with Security Building and Loan Association, and also a series of credit and debit slips of various dates in 1930 and 1931 relating to York, Rayburn, Dreyfus and Arrington loans.

Mr. Hardy: One of these tickets is in my handwriting and dated January 3rd, 1930. I was working for the Security Building and Loan Association at that time.

Mr. Peterson: After the Security Building and Loan closed I continued in the employ of the Arizona Holding Company, the Century Investment Trust and the Security Building and Loan Association beginning January 1st, 1932. I left Phoenix on or about February 9th, 1932. Shortly before I left Arizona I made a trip to Wellton, on or about February 6th or 7th of 1932.

Mr. Peterson: Who went with you? [481]

Mr. Hardy: We object to that, your Honor. It is immaterial on that date, long after these com-

(Testimony of R. F. Watt.)

panies closed and after any date named in the indictment or the Bill of Particulars.

The Court: He may answer.

Mr. Hardy: Exception.

The Witness: I went with Dan Shreve in his car.

Q. Did you meet anybody at Wellton?

A. Yes, sir.

Q. Whom did you meet?

Mr. Hardy: We object for the same reason, your Honor, immaterial.

The Court: Same ruling.

Mr. Hardy: Exception.

The witness continuing: J. H. Shreve, Archie Shreve and Glen Perkins. We drove in Dan Shreve's car. There were some bundles in the back of the car. We were in Wellton only a few minutes. Both of the cars were driven west of Wellton, maybe two or three miles. We stayed there maybe an hour or so and returned to Phoenix on the same date and in the same car. When we returned those bundles were not in the car. I went to San Diego on February 9th, 1932.

Q. Were you employed after you went to San Diego?

A. Yes, sir.

Mr. Hardy: Now, we object, your Honor. It is immaterial. It refers to a transaction which occurred on a date after any date mentioned in the indictment herein, or the Bill of Particulars.

The Court: He may answer.

(Testimony of R. F. Watt.)

Mr. Hardy: This is remote and could have no bearing on the issues as confined by the indictment in this case. [482]

The Court: He may answer.

Mr. Hardy: Exception.

The Witness: Yes, sir.

Mr. Peterson: Q. Where were you employed?

A. In Room 620 in the Commonwealth Building, San Diego.

Q. Whose office was that?

A. The office of several corporations.

Q. Anybody have their private offices there?

A. Yes, sir.

Q. Who?

A. J. H. Shreve.

Q. Anybody else?

A. Archie Shreve's office was there.

The witness continuing: After I was employed there I saw the books of the Arizona Holding Company and the Century Investment Trust. I do not know how they got there. I know where I saw them first. In Archie Shreve's car, parked down in front of the Commonwealth Building. Mr. Evans and I took them upstairs. Those are the books that are in evidence here now in this case. The books remained there till some time in October, 1932. I was in the office at 620 Commonwealth Building on the date Mr. Wood appeared there. Those books were in the office on that date. At one time Mr. Wood was there they were in J. H. Shreve's private office.

(Testimony of R. F. Watt.)

Q. Did you see any files or correspondence of the three companies, the Arizona Holding Company, the Century Investment Trust and the Security Building and Loan Association in those offices at 620 Commonwealth Building?

Mr. Hardy: That question is leading, your Honor. We object on that ground.

The Court: Well, it is, but he may answer. [483]

Mr. Hardy: And we object for the same reasons heretofore objected to this testimony, and an exception, please.

The Witness: Yes, sir.

Mr. Peterson: Q. Where were those?

A. In J. H. Shreve's office.

Q. Did you work on the books of the Century Investment Trust and the Arizona Holding Company after you were over in San Diego?

Mr. Hardy: Now, your Honor, we object to any work done upon the books by this witness after the last date alleged in the indictment herein, and the last date in the Bill of Particulars as filed by the Government. It is inadmissible because it is incompetent, and for the further reason that it could not, within the confines of the indictment, be utilized to prove any offense against these defendants. If so, the indictment should have been carried up to and beyond those dates.

The Court: He may answer.

Mr. Hardy: Exception.

The Witness: Yes, sir.

(Testimony of R. F. Watt.)

The witness continuing: There was general correspondence files and side papers of the Security Building and Loan Association, the Arizona Holding Company and the Century Investment Trust in that office. By side papers I mean the loan file itself contained a note and a mortgage, guaranty of title, insurance and appraisal, and papers pertaining to a loan. The books of the Arizona Holding Company and the Century Investment Trust were shipped back to Phoenix by express. Dan Shreve and I packed them. The correspondence files and side papers were not shipped but remained in room 620 Commonwealth Building. No other persons were in that room except J. H. Shreve, Archie Shreve and Dan Shreve. [484] During the term of my employment I was paid, I believe, by the Guardian Western Company, which was controlled and managed by J. H. Shreve. The stock certificate books and the check books and the close-out sheets from the ledgers were left over there and were not shipped with the other books of the Century Investment Trust and Arizona Holding Company. I saw minute books of the company. They were not shipped; as far as I know they were left in that office. That is where I last saw them.

Cross Examination

I quit work in that office November 8th, 1932. I have no knowledge that Mr. Wood made a trip to San Diego after I quit that employment to get

(Testimony of R. F. Watt.)

other records in connection with this company. Dan Shreve and I did crate some books and records and documents and shipped them over here to the firm of Canning, Wood and Null. I presume they were shipped at the request of Mr. Wood. I have no knowledge of what Mr. Wood selected when he was in San Diego. I talked to him but did not arrange for the shipment. Mr. Wood made a sort of casual inspection of the books while he was over there. After I returned to San Diego I also worked for the Commonwealth Building Company and the Guardian Western Company for a while. The books were in room 620 Commonwealth Building. The Guardian Western Company was also in that office. It was one big room, then there was J. H. Shreve's private office down at the end, glassed off. Three or four rooms were thrown together. There were half a dozen employees in the big room. Some of them were Mabel Zinn, Valeria Munter, A. H. McIntosh, Mrs. Neisler, Marian Waddell; that is about all I remember. A. C. Shreve and J. H. Shreve and D. H. Shreve were around there. Mr. DeLatour was not in that office. Stuart Ver Mehr had an office on another floor. He was manager of the Commonwealth Building during part of that time. I saw Col. Carruthers there once in a while. Hugh D. Cook was in there part of the time. I saw Mr. Wood in San Diego several times in these offices. The books were shipped to the [485] firm I have named. Mr. Wood was a member of that firm. He is the

(Testimony of R. F. Watt.)

same Wood to whom I shipped the books at Phoenix, Arizona.

Redirect Examination

Dan Shreve came to San Diego three or four months, I believe, after I went to San Diego on February 8th, 1932. The Valeria Munter I mention is the lady sitting here at the counsel table.

GLEN O. PERKINS,

recalled as a witness on behalf of the Government, testified:

I lived in Arizona in 1920 to 1923, and from 1928 to the end of 1931. I came to Arizona in 1928 to organize the Arizona Holding Corporation, which was later organized. I have known the defendants A. C. Shreve and J. H. Shreve for quite a number of years. I never knew J. H. Shreve well until 1929. I met him in reference to the Arizona Holding Corporation. To the best of my knowledge, in 1929. I am familiar with a company known as the Security Building and Loan Association. I don't believe I was ever employed by the Security Building and Loan Association. I worked in conjunction with it but my pay didn't come from it. I became connected with that company at the time it was organized. There were in that company at the time of its organization myself, J. H. Shreve, J. G. Cash, John Hobbs, and several other people whose names were used but were not associated with the company. I first became con-

(Testimony of Glen O. Perkins.)

nected with the Security Building and Loan Association in Tucson. I was there until the office was opened in Phoenix in the fall of 1929. I made a trip to San Diego and J. H. Shreve told me they were going to open the office in Phoenix and he wanted me to come to Phoenix and eventually take charge of the office. I came to Phoenix but did not take charge of the office. At the time of the opening of the office A. C. Shreve came over and took charge. I worked in conjunction with him in the Security Building and Loan Association at that time. [486] During the time I was with the Security Building and Loan Association in Tucson, J. H. Shreve and A. C. Shreve were there at times. J. H. Shreve worked some of the time. I conferred with him about the business of the corporation there. I conferred with J. H. Shreve after I moved to Phoenix, in the office there. I could not tell you how many times. I was actively engaged in the business of the Security Building and Loan Association, with others, during the time of its existence. During these periods of time I conferred with J. H. Shreve, Dan Shreve, possibly Archie Shreve, and John Hobbs, relative to business transactions. I received my instructions from all of them at different times up until the closing of the Building and Loan Association, which closed in the fall of 1931. I had a conversation with J. H. Shreve shortly before the Building and Loan Association closed. I had several conversations with him at that time. I talked

(Testimony of Glen O. Perkins.)

with him in the Building and Loan office; I talked with him in Dan Shreve's room; I talked with him on the telephone and the hotel, in the street, many places. I had a telephone conversation with him shortly before the Building and Loan closed. I couldn't say the number of days but it was within seven days. I had a conversation with J. H. Shreve over the telephone in San Francisco. He called Dan Shreve, who was not present, and I talked with him. He asked me how we were getting along and what was doing. I told him the Bank Examiners were there and were going to close the doors unless something was done, and he told me to tell Mr. Ellery, who was the Bank Examiner, that he would be over there in a few days with the \$50,000 which they had demanded to be put into the association. I did so. I saw J. H. Shreve after the Building and Loan Association closed, and I saw him in between the time of that conversation and the time the Building and Loan closed. He came to Phoenix before the Building and Loan closed. I saw him afterwards. I had a conversation with him relative to the Security Building and Loan Association in the hotel or in Dan's room, at the time the Building [487] and Loan was thrown into voluntary receivership. Dan Shreve was present. J. H. Shreve said that he had arrangements made with Neri Osborne and Lou Whitney to throw the company into receivership and Neri Osborne would be appointed receiver. That is my signature upon Government's Exhibit

(Testimony of Glen O. Perkins.)

204 for identification. The other signature is that of D. H. Shreve. I recall the occasion of signing that note and the circumstances are that J. H. Shreve was here at the time of the signing of that note. We were having trouble at that time with the Banking Examiners. I drove my car and took him to the Banking Superintendent's office. He then told me the matter was straightened out as far as the Banking Department was concerned, and by putting in this note and some additional notes and mortgages which he was going to deposit, that it would satisfy the Banking Department. Then the note was drawn and I signed it at the request of J. H. Shreve. There was attached to the note at that time a list of properties or mortgages, assets belonging to the Sunset—or the Security Building and Loan Association, I believe.

Mr. Peterson: We offer this document in evidence. (Government's Exhibit 204.)

Mr. Hardy: We make a formal objection to it, that it is incompetent, irrelevant and immaterial, and there is no showing it was ever put into effect, or there was any delivery, or that it has any connection with any transaction as alleged in the indictment in this case.

The Court: It may be received.

Mr. Hardy: An exception.

Government's Exhibit 204 was received in evidence.

(Testimony of Glen O. Perkins.)

GOVERNMENT'S EXHIBIT 204,
which is in full substance as follows: [488]

NOTE

\$250,427.45

Phoenix, Arizona, Oct. 1, 1931

In monthly installments after date, for value received, we promise to pay to Security Building and Loan Association, or order, at Phoenix, Arizona, the sum of Two Hundred Fifty Thousand four hundred twenty-seven and 45/100 Dollars, in monthly installments of Twenty-five Hundred and no/100 Dollars each, on or before the last day of each and every month following the date hereof, until the entire sum shall have been paid, with interest herein from date at the rate of seven per cent (7%) per annum, payable monthly, said interest to be deducted from the monthly payment. Principal and interest payable in lawful money of the United States.

We hereby deposit with said Security Building and Loan Association, as collateral security for the payment of this note, mortgages and contracts on real estate as per list hereto attached.

[Seal] CENTURY INVESTMENT TRUST

By D. H. SHREVE

President

By GLEN O. PERKINS

Secretary

Attached to said note is list of mortgages, as security, disclosing the date, the original amount

(Testimony of Glen O. Perkins.)

thereof, the balance due on October 1, 1931, including in such notes and mortgages, and designated as maker, are: Oscar H. Robson and wife, R. A. York, A. W. and Fannie York, Lyda Dreyfus, F. D. Arrington, Jas. M. Shumway.

The witness continuing: I signed the note to the First National Bank of Prescott for \$10,000. J. H. Shreve requested me to sign that note. I did not receive any money on the note and [489] I do not know what collateral was put up for that note. I believe there was a share of stock of the Security Building and Loan Association put in my name, and I endorsed it back, possibly more than one share. I have never owned any stock in it. I have never owned any stock in the Century Investment Trust or the Arizona Holding Corporation. I have never attended any directors meetings in which I was elected as an officer of the Century Investment Trust or the Security Building and Loan Association. *I never attended any directors meetings in which I was elected an officer of the Century Investment Trust or the Security Building and Loan Association.* It would be hard for me to say just who of the three Shreves told me of my election as a director or officer of these corporations. I am familiar with the signatures of J. H. Shreve and A. C. Shreve. I recognize the signature upon Government's Exhibit 189 for identification. They are the signatures of J. H. Shreve and A. C. Shreve.

Mr. Peterson: We offer Government's Exhibit 189 in evidence.

(Testimony of Glen O. Perkins.)

Cross Examination

Those signatures of J. H. Shreve and A. C. Shreve on that document marked Government's Exhibit 189 for identification might be a forgery. If you asked me to cash a check on those signatures, I would. That might be a forgery, I wouldn't say. Today is not the first time I ever saw that document. I saw it yesterday. I don't know whether it was after Mr. Watt testified or not. I did not discuss these signatures with Mr. Watt. The United States Attorney asked me whose signatures they were some time yesterday afternoon.

Government's Exhibit 189 was received in evidence.

GOVERNMENT'S EXHIBIT 189,

which, abstracted to the issue, is in full substance as follows: Check dated San Diego, California, November 15, 1929, issued by [490] Security Building and Loan Association by J. H. Shreve and A. C. Shreve, to Sunset Building and Loan Association, for \$5,000.00, drawn on First National Bank, Prescott, Arizona, endorsed Sunset Building and Loan Association, San Diego, California; perforated Paid 11-16-29.

The witness continuing: I recognize the signature of A. C. Shreve upon that check which is Government's Exhibit 187 for identification.

Government's Exhibit 187 was received in evidence.

(Testimony of Glen O. Perkins.)

GOVERNMENT'S EXHIBIT 187,

which, abstracted to the issue, is in full substance as follows: Check No. 2, dated Prescott, Arizona, February 8, 1930, payable to order of Phoenix National Bank, for \$2,000.00, issued by Security Building and Loan Association by Glen O. Perkins and A. C. Shreve, drawn on First National Bank, Prescott, Arizona, endorsed Phoenix National Bank; perforated Paid 2-10-30.

The witness continuing: I had other conversations with J. H. Shreve other than that which I have testified in regard to a short time before the Security Building and Loan Association closed relative to the management. I talked to him once in the lobby of the Adams Hotel with nobody else present. That was at the same time, it was in the same bracket of days that he was here when the Building and Loan Association closed. He told me the Building and Loan Association would be put into receivership and that he would organize a company to buy the assets, trade for the assets of the Security Building and Loan Association, and that I could work in that organization if I wanted to. After I came to Phoenix to work in the Building and Loan, I had a conversation with J. H. Shreve relative to a change of management, once when we opened, and the second time when Dan Shreve came over. I had a conversation with Mr. Shreve relative to that on both occasions. It is hard to get a definite date as to the time Dan Shreve came [491]

(Testimony of Glen O. Perkins.)

here. As I remember it now, Dan Shreve came here in the spring of 1930—might have been the early spring. When Dan Shreve came, J. H. Shreve came with him and told me he was leaving Dan here because Dan wasn't well, thought the climate would be good for him, and wanted to know if it was all right with me to leave Dan here, that if I had any disagreements with Dan, or anything I thought was not right, to call him because, after all, he and I were going to run the business. After Dan came over I had a conversation with him in regard to the management of the business and in regard to Dan. That conversation was at the same time. Dan Shreve talked to me and wanted to know if it was all right with me for him to be over here for a while. He said he didn't want to do anything that wasn't all right with me. After Dan came over I had a conversation with J. H. Shreve relative to the management or change in management. There was one conversation at the time the Building and Loan Association closed. It was the same time when we had these other conversations that I have just testified to, in that same few days. The conversation was that he was going to take Dan back to San Diego and leave me here to handle what was left. I have seen this first part of the entries in Government's Exhibit 75 for identification. I never saw this part right here (indicating). This part are the minutes of the Security Building and Loan Association. I signed some of those minutes. Part of these minutes were

(Testimony of Glen O. Perkins.)

written in Tucson, part in Phoenix, and part of them in San Diego. I was present when these minutes were written up in San Diego, at 546 B Street, which was the office of J. H. Shreve. I took the minutes over there, at the request of J. H. Shreve, in the spring or late spring of 1931, by airplane. I delivered them to 546 B Street. At the time I delivered them, I wouldn't know who was there. I know I took them. I know who I took them to; who all was there I don't know. I took them to J. H. Shreve. I saw something done with those minutes while I was there, either that day or the next morning. There were some addi- [492] tions made, there were some changes. Some of the minutes were taken out and rewritten and put back. Those minutes were rewritten and changed by J. H. Shreve, myself and Miss Munter. Miss Munter is here in court. After the minutes were changed I came back to Phoenix with the book. J. H. Shreve said something about the changes that he desired. He had me go through the book and mark the places where his name appeared in the record and there was some other names he desired to have taken out of the record. I went back and marked those pages, and then they rewrote those pages. I showed him where his name appeared and he looked at it, and he said he wanted those rewritten, so we went back to a certain point and rewrote all the minutes, leaving—changing the names. That is my signature upon form letter being Government's Exhibit 165 for identification.

(Testimony of Glen O. Perkins.)

Q. Was that mailed out in the general course of the business of the Century Investment Trust?

A. We mailed out—yes, sir; those letters were mailed out, yes, sir.

Mr. Peterson: I offer Government's Exhibit 165 for identification in evidence, being a letter which Mr. O. H. Robson testified he received through the United States mail.

Mr. Hardy: Government's Exhibit 165 for identification, your Honor, purports on the face of it is addressed to O. H. Robson and Mary Robson. It is the position of the defendants that there isn't sufficient proof as yet to show that those were received through the mails by either of those persons. There is no positive testimony from Robson in that respect, and Mary Robson, another addressee in the letter, has not yet testified. There is no proper foundation laid yet.

The Court: It would not have to be [493] received if it were deposited in the mail, would it?

Mr. Hardy: Well, I should think the letter would have to be received, yes.

The Court: It may be received.

The witness continuing: The letters which are Government's Exhibits 161 and 162 for identification, were mailed out in the regular course of business. It was the custom to mail those dividend letters out.

Mr. Peterson: I offer in evidence Government's Exhibits 161 and 162 for identification, which is the

(Testimony of Glen O. Perkins.)

letter testified to by Mr. Wesley Palmer, that he received this through the United States Mail.

Mr. Hardy: Object to its receipt in evidence—their receipt in evidence upon the ground no proper foundation has been laid for its admission.

The Court: It may be received.

Mr. Hardy: Exception.

Mr. Flynn: Just a minute, I think we have got the wrong numbers on that exhibit.

The Clerk: This exhibit you offered is 162 and 163?

Mr. Peterson: I ask an order that that be changed.

The Clerk: Exhibits should be 162 and 163 instead of Exhibits 161 and 162.

The documents were marked Exhibits 162 and 163 in evidence.)

GOVERNMENT'S EXHIBIT 162, .

which, abstracted to the issue, is in full substance as follows: Envelope addressed to Mr. Wesley Palmer, R. F. D. #1, Mesa, Arizona, post-marked Phoenix, Arizona, Jan. 5, 1931, postage stamp affixed. [494]

GOVERNMENT'S EXHIBIT 163,

which, abstracted to the issue, is in full substance as follows: Letter written on stationery of Century Investment Trust, dated Phoenix, Arizona, Jan. 2, 1931, addressed to Mr. Wesley Palmer, R. F. D.

(Testimony of Glen O. Perkins.)

#1, Mesa, Arizona, signed Century Investment Trust by Glen O. Perkins, which is in full substance as follows: "Herewith we hand you dividend check on your preferred stock of Century Investment Trust. We are very happy to be able to pay you this dividend in the face of financial conditions over the country. The Century Investment Trust has had a good year and the Directors believe that our loyal stockholders have been of great help. As you know one of our sources of income is through the Security Building and Loan Association, which has made an excellent growth during the past year. We ask that you extend to the Security Building and Loan Association a helping hand, and this may be done by depositing your funds or by encouraging your friends and acquaintances to open accounts. We write all lines of insurance, and if you have not already placed yours with the Company we would be glad to handle it for you. Wishing you a happy and prosperous New Year, we are Sincerely yours, Encl. 1."

The witness continuing: The letter which is Government's Exhibit 173 for identification was a form letter mailed out in the regular course of business.

Mr. Peterson: I offer at this time Government's Exhibit 173 for identification, being a letter testified to by Mrs. Helen Hannon as having been received through the United States Mail—Helen Maynard.

Mr. Hardy: Object to the receipt of Government's Exhibit 173 in evidence, upon the grounds

(Testimony of Glen O. Perkins.)

no proper foundation has been laid for its admission.

The Court: It may be received.

Mr. Hardy: Exception. [495]

Mr. Hardy: And with regard to Government's Exhibit 173 for identification, we make a further objection that the document appears to be signed by D. H. Shreve, whose signature this witness has identified, the said D. H. Shreve is now deceased, the defendants here on trial have not had and do not now have any opportunity of the cross examination of said person.

The Court: Overruled.

Mr. Hardy: Exception.

Government's Exhibit 173 was received in evidence.

GOVERNMENT'S EXHIBIT 173,

being letter written on stationery of Century Investment Trust, Phoenix, Arizona, April 14, 1931, signed Century Investment Trust by J. H. Shreve, addressed to Stockholders, which is in full substance as follows: "Enclosed you will find your dividend check for the first quarter of 1931. The checks are fifteen days late for which we are sorry, but we feel that every stockholder will appreciate the checks in face of general conditions, when but few companies are able to pay dividends. It is a source of much satisfaction to know that the stockholders of the Century Investment Trust are loy-

(Testimony of Glen O. Perkins.)

ally assisting the Company. Many are using the Security Building and Loan Association, thus helping to build up this splendid association. Many of you have given us insurance and have directed your friends to us. We have installed a regular Insurance Department, writing all lines of insurance such as fire, automobile, life, burglary, etc. With the able assistance of every stockholder, this department can be made to pay the entire overhead of the Company. Thanking you for your loyalty and wishing you success, we are Yours very truly," In ink: "Mrs. Helen Hannon;" H. I. M. (in lead pencil).

[496]

Cross Examination

I am also under indictment in this case. I have a severance from them in the trial. I have not been promised any immunity for the testimony which I have given in this case. I have not discussed that question with the United States Attorney or either of his assistants. No one at my suggestion has discussed that matter with the United States Attorney or either of his assistants. Someone may have talked with them, I don't know. I testified because my attorney, Riney Salmon, advised me to go on the stand and tell the truth in this case. I have never heard Riney Salmon discuss the question of any immunity from prosecution with the United States Attorney or some of his assistants.

Q. Now, Mr. Perkins, answer the question—

(Testimony of Glen O. Perkins.)

Mr. Flynn: (Interrupting) I submit he has answered the question.

Mr. Hardy: Q. Do you not know whether he is——

The Court: (Interrupting) Well, at any rate, he has never discussed it with this Court.

Mr. Hardy: That is very true, your Honor, I have not made that suggestion.

The witness continuing: I have not discussed the question of my immunity with my attorney, but I have discussed this case with him. I am not afraid of the facts in this case. Riney Salmon is my attorney. Mr. Salmon did not represent me in the last trial of this case. I was represented by Alexander Murray. I have had other attorneys since Mr. Murray. I absolutely have not been promised any immunity from prosecution in this case nor have I been promised that this indictment would be dismissed to testify in this case. No promise whatever has been made with respect to the case and no suggestion has been made with respect to my testimony. Mr. Salmon has never promised me I would be out of this case at all. I don't know whether Mr. Salmon has made any representation in that respect. I first came to Tucson in 1920. [497] I was principal of the Tucson High School for three years. The circumstances under which I resigned were that I had been reelected to a position in the San Diego High School, I received an offer to go to the San Diego High School and receive a more lucrative and

(Testimony of Glen O. Perkins.)

better job. That was after I had been re-elected in Tucson. I resigned my position in Tucson and went to San Diego and became principal of the school at San Diego. I resigned at Tucson after school was out in the spring of 1933. I was under contract for the next year. I asked to be relieved of the contract so I could accept the position at San Diego. I asked to be relieved after the school session closed and then I went to San Diego, came back to Tucson, received a telegram I had been elected in San Diego, told my superintendent I was applying at San Diego, and came in and asked to be relieved of my contract to take a bigger school. I occupied the position of principal of the High School at San Diego for four years, when I resigned. Since then I have not been engaged in any educational work. I am a licensed real estate broker in California, at 610 Scripps Building, San Diego, working for myself. I held a teacher's license in California, did at the time I was working, but do not now. I hold one in Arizona. I have known John Hobbs since 1920. First when he was a student at the University of Arizona. That is when I was connected with the schools in Tucson. John Hobbs was not associated with me at the time of the organization of the Arizona Holding Corporation. I did not discuss the venture with Mr. Hobbs previous to the time I came to Tucson. I came over here of my own volition to organize a corporation to raise \$50,000 that was necessary to put up with the State Banking

(Testimony of Glen O. Perkins.)

Department to secure a charter for a Building and Loan Association. It was my own plan which I conceived. I have talked to Mr. Korbeck who resided in San Diego. I saw him a few days ago. I first discussed the matter with Matthews and Bilby, a law firm in Tucson. They incorporated the Arizona Holding Company. I discussed the financing [498] of the corporation with I don't know how many people we sold stock to, quite a number. I know L. C. James, Dr. Morris and Dr. C. A. Thomas. I discussed the company with those gentlemen. Mr. Korbeck and I explained our plan to them. I explained that the Building and Loan Associations were doing well in California, that they were very outstanding institutions, and that there were very few in Arizona and we believed it to be a fast growing state and a fertile field for a building and loan association; that the law required that we put up \$50,000 with the State Banking Department before we secured a charter; that we organize the Arizona Holding Corporation for the purpose of selling stock in that company and getting the \$50,000 and then putting that money up with the State Banking Department and getting a charter for the building and loan association; then we could operate as a building and loan association and grow and prosper. I thought we raised \$50,000. We raised \$35,000, I think we had \$50,000. Our permit with the State Corporation Commission required we impound the money that we took in and that we

(Testimony of Glen O. Perkins.)

were not to use any of this until the \$50,000 was in the bank and released by the Corporation Commission to the Banking Department. When we raised \$35,000 and had \$35,000 in the banks at Tucson, and at that time J. H. Shreve came in and my management of any of these companies at that time ceased. I say I raised \$35,000 and had it in the bank at the time J. H. Shreve came in. I have forgotten that L. C. James, Dr. Morris and Dr. Thomas had an obligation at the Consolidated National Bank of \$15,000. They had signed an agreement with me in writing that when we got \$35,000 in the bank they would put in \$5,000 apiece. They were the directors. They had not signed the note before I discussed the corporation with J. H. Shreve. I talked with him in San Diego about the Arizona Holding Corporation or the Security Building and Loan Association before Mr. James, Dr. Morris and Dr. Thomas signed that note. I talked to A. C. Shreve about the Arizona Holding Corporation. I have testified that the company was organized - [499] ized by Matthews and Bilby. I had not discussed the organization of that corporation with J. H. Shreve and A. C. Shreve before I discussed this matter with Matthews and Bilby. The first time I discussed the organization of that corporation was with Archie Shreve in Tucson. He was coming there on business, came into our office and asked how we were getting along. At that time, I believe, we had \$30,000 in the bank, and they were

(Testimony of Glen O. Perkins.)

coming here to raise money. He suggested that he might be interested in a building and loan association in Arizona as they were interested in California, and John Hobbs and I tried to interest him in putting some money into the Arizona Holding Corporation, merely as stockholders. That would be in the latter part of 1928. Archie Shreve told me they owned the Santa Rita Hotel and he was coming over on that business. The offices of the Arizona Holding Company were in the Santa Rita Hotel. I was in charge of it. From that office I conducted the stock selling campaign. The office in the Santa Rita Hotel was rented by the hotel organization. I first talked to Archie Shreve with regard to this corporation and that it was necessary to raise \$50,000 in order to finance the organization and get a permit for a Building and Loan Association. It was hard work doing it. Dr. Thomas, Dr. Morris and Mr. James were hesitant about putting their money in as they had agreed to. Archie Shreve came over two or three times after that. I had an appointment to talk to him at one time and didn't get to talk to him, and then I did talk to him, and he said that he took it up with J. H. Shreve and thought they could do something. We had some communications back and forth. I talked to J. H. Shreve by telephone, and John Hobbs, and I went to San Diego to see him. He said the way we put up the deal to him he would not be interested in it. He told me that over the telephone. John Hobbs

(Testimony of Glen O. Perkins.)

and I kept trying to sell him. He called and asked us to come to San Diego. John Hobbs and I saw him there in his office. He said he would come over to Tucson, if he could make the proper arrangements over at [500] Tucson. He came over to Tucson. I would not say positively whether he made two trips or one. He came and consummated a deal that we did not put up, about the first ten days of March, 1929. Archie Shreve was not with him. J. H. Shreve was by himself. J. H. Shreve made a deal with L. C. James, with the assistance of John Hobbs and myself. We had been trying to get Mr. Shreve to come in and put up some money and it was the agreement he could put one or two members on the Board, and that was what he objected to, unless he could have control. So when he came to Tucson we made a deal with L. C. James whereby L. C. James, Dr. Morris and Dr. Thomas resigned and elected some of the people Mr. Shreve brought over at that time from San Diego. They were Mr. Cash, Mr. Gillen and Mr. Arrington, and there were one or two other people around that I don't recall now. He brought those with him. I don't know where the others came from. I believe one of those was Mr. Beach. The Cash whom I testified about was the J. G. Cash who afterwards became associated with the Building and Loan Association. He was from San Diego. Mr. Shreve and Mr. Hobbs went over to see L. C. James, it happened Mr. James came back with Thomas, and Dr. Morris, to go to lunch

(Testimony of Glen O. Perkins.)

at the Santa Rita Hotel with Shreve, and we found Dr. Morris, Dr. Thomas and James had resigned and they had elected some of the people who came with Mr. Shreve to the Board of Directors of the Arizona Holding Corporation. I don't know that an attorney was present at that time; I was not present. At that time John Hobbs and I had raised something in excess of \$35,000. Up till that time J. H. Shreve or Archie Shreve had no connection whatever with that stock selling campaign for the Arizona Holding Corporation. The Building and Loan Association was organized. I don't know whether the money was ever raised or not. It began to operate in the Santa Rita Hotel in Tucson. I was connected with that office as an outside salesman in connection with the stock of the Arizona Holding Corporation and deposits in the Building and Loan Association. I was employed by J. H. Shreve. [501] A. C. Shreve had nothing to do with my employment. J. H. Shreve opened the office of the Security Building and Loan Association in Tucson. I believe he authorized John Hobbs to put furniture and fixtures in and to attend to details of getting the office opened. J. G. Cash was placed in charge of the office of the Building and Loan Association, and John Hobbs was to work in the office as assistant to Mr. Cash, and I was just a salesman. Thereafter an office was opened in Phoenix, in 1929, several months after the Tucson office was opened. Archie Shreve took charge of the

(Testimony of Glen O. Perkins.)

Phoenix office and I came over to the Phoenix office. I was placed on a salary at that time and worked as a salesman at a salary of \$400.00 per month. I was performing practically the same duties in Phoenix that I performed in Tucson. I don't know whether I was an officer of the Building and Loan Association or not. I signed checks and statements as an officer in that organization at a later time. I don't know whether I did then or not. I did at Tucson. As far as the name in the books, I don't know that J. H. Shreve became interested in the Arizona Holding Corporation in the early spring of 1929. We knew him as the boss, he was the man who directed us in connection with the Arizona Holding Corporation and the Security Building and Loan Association. The first time Archie Shreve had anything to do with either the Arizona Holding Corporation or Security Building and Loan Association was the time we moved to Phoenix. That would be in the fall of 1929. The orders for the Tucson office came from the Phoenix office when Archie was here. If he wanted to send any word down there, he sent it. I didn't send any word from the Phoenix office on my own authority. It came from J. H. Shreve or Archie Shreve or when Dan Shreve was here. I always felt that Archie Shreve was working under the direction of J. H. Shreve. I had no way of knowing, but I felt he was. I went further than a casual way in discussing with Archie Shreve matters pertaining to the control or management of the Arizona Holding [502] Corporation or

(Testimony of Glen O. Perkins.)

the Security Building and Loan Association. If I had any deals to submit I submitted them to him while he happened to be in the Phoenix office. I always felt that J. H. Shreve was the one that could and did direct. He was the boss as far as I was concerned. J. H. Shreve was the moving factor in the domination and control of the business of the Arizona Holding Corporation and the Security Building and Loan Association. He was the one I looked to for my directions. I may not have had documentary knowledge that J. H. Shreve dominated and controlled the business affairs of the Security Building and Loan Association, Arizona Holding Corporation, and the Century Investment Trust, but I know it just like there are a lot of things you know, just know, that is all. I knew who I was working for. I don't know what arrangements J. H. Shreve had with Archie Shreve or Dan Shreve. He was the one who fixed my salary and he was the one who fixed John Hobbs' salary at \$200.00 when he went to work with Mr. Cash when they opened the office in Tucson. I though Jesse Shreve completely dominated these three companies from the time he became connected with them up until the time they closed their business and went into receivership or insolvency, and everything else that had any connection with these companies. I have no documentary evidence to prove that but that is the way I considered it. There were a lot of things went on there I didn't know about. I was not in position to know

(Testimony of Glen O. Perkins.)

about the management or control of these corporations. I knew Jesse Shreve could change orders any time he wanted to. I recall when Dan Shreve came from San Diego to Phoenix in connection with these companies. It was some time early in the spring of 1930, as I remember it now. I have testified Jesse Shreve brought Dan over here. I had a conversation with Jesse Shreve alone at that time in the office of the Security Building and Loan Association. I talked with Dan and with everybody in the office. At the time Archie Shreve was here he was in the same capacity, as far as I was concerned, as Dan was afterwards. When [503] Dan came over he stepped in where Archie left off, which was in the first part of January, 1930. Then Archie stepped out of the picture and Dan moved in. Jesse Shreve brought Dan here and Archie went home with him. I suppose Archie went back to San Diego, at least he wasn't here after that. At the time of this change between Archie and Dan, Jesse Shreve was controlling and dominating the corporation. I identified the signatures upon Government's Exhibits 163, 165 and 173 as having been signed by me and one signed by Dan Shreve. I don't know that Jesse Shreve prepared that letter. I couldn't tell you if he prepared the letters in San Diego and sent them over to me to be sent out. I don't know who prepared them. I don't remember that I had a conversation about these letters before I signed them. I don't remember that he told me

(Testimony of Glen O. Perkins.)

to sign those letters and mail them. I can't remember who prepared these letters and directed me to mail them. I would like to explain. Those are dividend letters and they were gotten out in the office and some of them were put on my desk to sign, some sent to Tucson for John to sign, Dan signed some, and then they were mailed out. I would have signed some of these letters without Jesse Shreve directing me to send them. If Dan asked me to sign I would have signed, or if Archie had asked me to sign them I would have signed them in the regular course of business. Neither John Hobbs nor Cash would have asked me to sign them. By saying that I knew the set-up of the company, I knew Mr. Cash and Mr. Hobbs would not be telling me to sign letters because they would not be getting out letters. I said I don't know whether or not Jesse Shreve told me to sign those letters and mail them so I could get some money back. I don't recall a conversation with Jesse Shreve at that time. That is ridiculous; of course I didn't. As to explaining what is ridiculous about it, I won't quarrel with you. I don't know that Jesse Shreve wrote these letters himself. I said I don't know and I don't remember Jesse Shreve, himself, actually mailing these [504] letters. I know we sent those letters out to sockholders and I signed part of them. I don't think that is all I know about these letters. After Dan Shreve came to Phoenix, I don't know how many times I saw Jesse Shreve in the Phoenix

(Testimony of Glen O. Perkins.)

office or elsewhere. I saw him here after that in the office, in Dan's room, in the hotel, on the street, and in Dan's room in the San Diego Club. I lived about two or three miles north. I can't put my finger on the date I first saw Jesse Shreve after the brought Dan Shreve and put him in the office. That is a long time ago. I remember I talked to him in Dan Shreve's room. That is not the first time I saw him after Dan came over here. I saw him wherever he was on several occasions. I don't know the first one or the second one. There were lots of trips over here, casual and nothing special to take up with me. He was just here and I talked with him or something like that. He made trips after Dan came here. I suppose he came here in connection with the business of these corporations. He was in the office talking business. I don't know whether he had any other business or not. He gave instructions to me and I heard him tell Dan things about how the business should be run. He was continually wanting us to get out and do things, get more business. He told me there were lots of good men out of jobs, and lots of bankers out of jobs, and that he could hire men very cheap, cheaper than he was paying me, and it would be necessary for me to work. I expect that was true at the time. That was after Dan came over. As I remember, Archie was only here once subsequent to the time Dan came. I think that was the time he brought the Rayburn loans over. I can't fix that time. I don't remember that

(Testimony of Glen O. Perkins.)

I had any conversation with Archie Shreve after Dan came into the business with reference to the management, control of operation of either the Arizona Holding Corporation, Century Investment Trust or the Security Building and Loan Association. I don't know that I discussed anything particularly with Archie [505] after that. I don't remember that he ever gave me any directions. I recall the closing of these corporations very well. Jesse was here about the time they closed. He was here just before they closed. Whether he was here on the day they closed, or the day after, I don't recall. That was after I talked with him over the telephone in San Francisco. I had a conversation with Jesse Shreve when he was here just before the companies closed. That is the time that Jesse Shreve told me he had made an arrangement with Louis B. Whitney, an attorney in Phoenix, and Neri Osborne, Jr., a resident of Phoenix, to place these corporations in receivership and appoint Neri Osborne receiver. He had spoken of liquidating the companies at a prior date. At the time of these conversations with Jesse Shreve with regard to these liquidations, Archie Shreve was present. That was before the conversation with Jesse Shreve in San Francisco. Archie was present the first time he spoke about liquidating the companies. That was at his home in San Diego. Archie Shreve, John Hobbs and myself were present. I think it was earlier than November of the year the Building and Loan closed.

(Testimony of Glen O. Perkins.)

The Building and Loan Association closed in 1931. Mr. Whitney and Mr. Osborne were not discussed in the conversation in San Diego in which Jesse Shreve, Archie Shreve, John Hobbs and myself were present in Jesse Shreve's home. This conversation in San Diego was prior to the reference to those gentlemen. I don't know that Jesse Shreve discussed with me the employment of Whitney and the appointment of Osborne as receiver. It was the time that Dan was here that the Security Building and Loan Association began to have trouble on account of withdrawals, after Dan had been brought over here by Jesse Shreve. As I remember it, we were having trouble to meet withdrawals about two months before we actually closed. I would say we began to have trouble with withdrawals about September 1st, 1931. Dan came in the early part of 1930. Jesse Shreve was here before we closed and I discussed the situation with him. I discussed it with [506] Archie, or Archie discussed it with me. As I remember, these withdrawals extended over a period of two months. I don't know how many times Jesse Shreve came over. I don't know whether there were any conferences during that period between the members of the Tucson office and this office in which J. H. Shreve was present. There must have been. John Hobbs was up here at one time, I remember, and I was here. I don't remember whether or not Jesse Shreve was here when Dan Shreve was. I

(Testimony of Glen O. Perkins.)

don't think Archie Shreve was here at that time. I don't think I discussed these withdrawals or the period when no withdrawals could be made with Archie Shreve. I don't think I did. I stated that Jesse Shreve told me he planned to purchase the assets of the Security Building and Loan Association and form a new company to liquidate those assets. I don't remember that anybody was present at that conversation. It was in the lobby of the Adams Hotel. Dan was not present. He made some suggestion to me about remaining with the liquidating company. I can't remember that he had any additional conversations with me concerning the organization of the liquidating company. He never discussed the matter with Mr. Osborne and Mr. Whitney in my presence. I don't know that Jesse Shreve never knew Louis B. Whitney or Neri Osborne, Jr., until these companies had been placed in receivership. After the telephone conversation I had with Jesse Shreve in San Francisco, I testified I came down here and he and I went to see the Superintendent of Banks. I drove Jesse Shreve out there. Mr. Shreve had a conversation with Mr. Ellery. I was not in the private office. I do not know what the conversation was. I don't know whether I had a conversation with Mr. Ellery before we took the trip out there. Archie Shreve was not along, and Dan Shreve did not go with me. I think Dan was in Phoenix then. I don't know that J. H.

(Testimony of Glen O. Perkins.)

Shreve was present when this note which is Government's Exhibit 204 was prepared. All I know is that he told me they were going to prepare a note and sell the assets of the Security Building and Loan [507] Association to the Century Investment Trust, and that some additional first mortgages would be put up as collateral, and that that would satisfy the Banking Department. I don't know that this note was discussed with the Banking Department. I was not present. I am telling you just what he told me about it. I signed this note and that is Dan's signature on the note. I don't know who prepared it. I don't know that it was signed on October 1st, 1931, which is the date it bears. I don't know who attached this list to the note and I don't know who prepared the list. All I know about this note is that I signed it. I don't know that it was ever delivered to the payee therein or that it was ever approved by the Banking Department, nor that it was ever accepted by the Security Building and Loan Association. I don't know whether this note ever became an asset of the Security Building and Loan Association. I don't know why. All I know is that I signed it. Jesse Shreve told me he was going to draw the note and I don't know who asked me to put my name on it. It might have been Dan, it might have been Jesse, I don't know. I don't know whether or not we took this note out to the Banking Department. We might have and we might not. I

(Testimony of Glen O. Perkins.)

can't recall now whether this was done before or after the conference with the Superintendent of Banks. J. H. Shreve told me he was either going to take it up with the Banking Department, or he did take it up with the Banking Department. He told me, as I previously told you, he was going to sell the assets of the Security Building and Loan Association to the Century Investment Trust and put up some additional collateral to satisfy the Banking Department. We had talked about it several times after the conference with Mr. Ellery. I testified that Government's Exhibit 75 is a minute book of the Board of Directors of the Security Building and Loan Association, except those pages within the binder following the marker which states "Stock Ledger". I do not know who kept those minutes. They were kept in the office. I don't know who had charge of those minutes. They were [508] kept in the office of the Security Building and Loan Association at Phoenix, and previously had been kept at Tucson. I don't know who kept these minutes in the Tucson office. I don't know by whom the minutes of the meeting held at two o'clock P. M., on the 7th day of March, 1929, were prepared, nor the minutes of meeting of March 9th, 1929. They were signed by me as Vice President of the Security Building and Loan Association. I don't know who kept the minutes of April 2nd, 1929. They were signed by me as Assistant Secretary. I don't know

(Testimony of Glen O. Perkins.)

who prepared the minutes of May 7th, 1929 I signed those minutes as Vice President of the Security Building and Loan Association. I don't know who prepared the minutes of June 4th, 1929. They are signed by me. I don't know who prepared the minutes of July 2nd, 1929. They are signed by me as Vice President of the Security Building and Loan Association. I don't know who prepared the minutes of August 6th, 1929. They are signed by me as Vice President of the Security Building and Loan Association. I don't know who prepared the minutes of September 3rd, 1929. They are signed by me as Vice President of the Security Building and Loan Association. I don't know who prepared the minutes of October 6th, 1929. They are signed by me as Vice President of the Security Building and Loan Association. I don't know who prepared the minutes of November 5th, 1929. They are signed by me as Vice President of the Security Building and Loan Association. I don't know who prepared the minutes of December 3rd, 1929. They are signed by me as Vice President of the Security Building and Loan Association. I don't know who prepared the minutes of January 3rd, 1930. I think I know who prepared the minutes of January 3rd, 1930. I know who prepared a part of these minutes. I might err if I tried to select all of them. I know some of these minutes were changed and I think that is one of them right there. I am referring to the minutes of January 3rd, 1930. They were signed

(Testimony of Glen O. Perkins.)

by me as Vice President of the Security Building and Loan Association. I don't know exactly [509] who prepared the minutes of January 7th, 1930. They are signed by me as Assistant Secretary of the Security Building and Loan Association. I don't know who prepared the minutes of February 3rd, 1930. They are signed by J. H. Shreve, Chairman, by Glen O. Perkins, Secretary, of the Security Building and Loan Association. I do not know who prepared the minutes of February 3rd, 1930. They are signed by A. C. Shreve. I do not know who prepared the minutes of February 18th, 1930. They are signed by me as Assistant Secretary of the Security Building and Loan Association. I don't know who prepared the minutes of March 1st, 1930. They are signed by me as Assistant Secretary of the Security Building and Loan Association. I do not know who prepared the minutes of April 1st, 1930. They are signed by me as Assistant Secretary of the Security Building and Loan Association. I do not know who prepared the minutes of May 6th, 1930. They are signed by me as Assistant Secretary of the Security Building and Loan Association. I don't know who prepared the minutes of June 3rd, 1930. They are signed by me as Assistant Secretary of the Security Building and Loan Association. I do not know who prepared the minutes of July 1st, 1930. They are signed by me as Vice President of the Security Building and Loan Association. I do

(Testimony of Glen O. Perkins.)

not know who prepared the minutes of August 5th, 1930. They are signed by me as Vice President of the Security Building and Loan Association. I do not know who prepared the minutes of September 2nd, 1930. They are signed by me as Vice President of the Security Building and Loan Association. I do not know who prepared the minutes of October 1st, 1930. They are not signed. I do not know who prepared the minutes of October 7th, 1930. They are signed by me as Assistant Secretary of the Security Building and Loan Association. I do not know who prepared the minutes of November 4th, 1930. They are signed by me as Assistant Secretary of the Building and Loan. With respect to the minutes of December 2nd, 1930, right in here is the section, and there are probably some back here, I can't [510] pick them out now, that were written in San Diego. Beginning with December 2nd, 1930, I think is the date when Jesse Shreve resigned, yes, they took his name out. I signed these minutes of December 8th, 1930, as Secretary. Those may have been changed. Some of them might have been changed nearer the front. There were certain sheets, minutes, taken out and rewritten and put in, and some of them were never written up, which ones they are I can't say, and I can't say who prepared them. I know who prepared some of those, but to tell you who prepared all, I could not do it. Miss Munter wrote them in San Diego, and J. H. Shreve

(Testimony of Glen O. Perkins.)

told her what to put in them. I was present and saw her write them. I think that was in May, 1931. J. H. Shreve told me to find out where the minutes had not been written, that they wanted to fix the minute book up, and I made notes on a sheet of paper of meetings that there were no minutes for, and then there were some other people or persons whose names were in the minutes that they wanted to take out, and I went through and made notes on what pages their names appeared and then they rewrote the minutes there. There were never any meetings held. It was just minutes had been written. I testified I had made some notes with reference to meetings, and in San Diego I prepared the minutes with respect to that. I will explain to you again. J. H. Shreve called me up and asked me to bring the minute book over. After I got over there he said "I want to fix the minute book up, bring it up to date and make some changes," and so to take his name out a ways back, and so I went through and made notes of the meetings there were no minutes written up for, and that is what confused me, so I said there were no actual meetings held. The minutes were written up usually every month, but the formal meeting was not held. The minutes were just written up and handed to me to sign, and I signed them. I signed these minutes of December 8th, 1930, which refers to the adjourned meeting of the Board of Directors of the Security Building and Loan Association, as Secretary. I was told that

(Testimony of Glen O. Perkins.)

was the way they [511] wanted to keep the minutes. They always wanted Hobbs, Watt or I to do the signing. Dan was more willing to sign. He was not always asking me to sign. He would sign things himself. Ordinarily they wanted someone else to sign, some of the rest of us. The signatures of Archie Shreve, J. H. Shreve and myself are here. The minutes of the meeting on January 6th, 1931, are signed by R. F. Watt, Assistant Secretary. It relates to a transaction where it states I submitted a report, but I never submitted any report to the Board of Directors of any of those corporations at any time, because I never attended a Board of Directors meeting. I signed the reports, I never submitted any. Unfortunately I did sign and submit reports to the Arizona Corporation Commission. I do not know who prepared the minutes of February 2nd, 1931. I could not say whether that was one we rewrote or not. They were signed by J. H. Shreve and John C. Hobbs. That is the same John Hobbs who was associated with me in the organization of the Arizona Holding Corporation. I do not know who prepared the minutes of February 2nd, 1931. They were signed by J. H. Shreve and John C. Hobbs, the same persons who signed the preceding minutes. The minutes of March 3rd, 1931, April 7th, 1931, May 5th, 1931, June 2nd, 1931, were signed by John Hobbs, and on June 5th and June 13th, 1931, by D. H. Shreve, and on July 7th and August 4th and September 1st, 1931, by John

(Testimony of Glen O. Perkins.)

Hobbs as Assistant Secretary, and on September 9th, 1931, by me as Secretary of the Security Building and Loan Association, and on September 22nd, 1931, September 30th, 1931, and October 6th, 1931, by me as Secretary of the Security Building and Loan Association. Referring to the recital in the minutes, "On motion duly made, seconded and carried, the resignation of J. G. Cash as Director of this Association, which had heretofore been presented, was accepted, effective at once," which is dated October 6th, 1931, Mr. Cash had nothing to do with this Company for a long time before that. His name may have remained as a director, but he had nothing to do with the Company. [512] I don't know that he ever formally resigned as a director of the Security Building and Loan Association. That is my signature on those minutes. The minutes of November 12th, 1931, are signed by me as Secretary of the Security Building and Loan Association. I do not know by whom they were prepared. I signed all of the minutes because I was requested to sign them. I have testified that I have been Principal of the High School in Tucson, and Principal of the High School in San Diego. I severed my connection with the San Diego High School in 1927. I ceased to become a teacher in California at that time. I am acquainted with Mr. Hastings and Mrs. Lena Krouse of San Diego.

(Testimony of Glen O. Perkins.)

Redirect Examination

I recognize my signature upon the letter and envelope being Government's Exhibits 205 and 206 for identification. That letter was mailed in the regular course of business of the Security Building and Loan Association. I remember dictating the letter to the secretary; I signed it and told her to mail it.

Government's Exhibits 205 and 206 were received in evidence.

GOVERNMENT'S EXHIBIT 205,

which, abstracted to the issue, is in full substance as follows: Envelope addressed to Mrs. Alice H. Davis, 439 So. Devereaux Street, Globe, Arizona, post-marked Phoenix, Arizona, Sept. 22, 1931, post-age stamp affixed.

GOVERNMENT'S EXHIBIT 206,

being letter written on Century Investment Trust stationery, 119 North Central Avenue, Phoenix, dated September 21, 1931, signed Glen O. Perkins, Secretary, addressed to Mrs. Alice H. Davis, 439 So. Devereaux Street, Globe, Arizona, which is in full substance as follows: "Dear Mrs. Davis: Received your letter yesterday. Mr. Shreve or I will be in Globe the latter part of this week or [513] the first part of next week and will see you relative to the matters spoken of in your letter."

(Testimony of Glen O. Perkins.)

The witness continuing: I recognize the fac-simile signature upon Government's Exhibit 207 for identification, as the signature of J. H. Shreve.

Recross Examination

The envelope and letter marked Government's Exhibits 206 and 205, were addressed to Mrs. Alice H. Davis at Globe, Arizona. I dictated the letter and Maude Gowdy, the secretary in the office, mailed it. There was a secretary in the office of the Security Building and Loan Association on September 22nd, 1931, named Maude Gowdy. The reason I know, that is her initials at the bottom, and she was there at the time. Her duties were secretarial and she took care of insurance policies. She was a stenographer. As a matter of fact J. H. Shreve or Archie Shreve didn't tell me to dictate this letter. They might have known it was mailed, I don't know about that. I had no way of knowing that they knew. That letter came in the mail in the regular course of business and I answered it the same way. Archie Shreve or Jesse Shreve were not present at the time and I did not consult with them at the time I dictated this letter, and they did not consult with me. I said in the letter, "Mr. Shreve will be in Globe the latter part of this week or the first part of next week, and will see you relative to the matter spoken of in the letter." I meant Dan Shreve. I believe that this letter is one of the letters set up in the indictment in this case.

(Testimony of Glen O. Perkins.)

Q. You are sure this Mr. Shreve is not Jesse Shreve or Archie Shreve?

A. It was Dan Shreve.

Mr. Hardy: Well, upon the strength of that testimony, your Honor, we move to strike upon the ground that Dan Shreve is deceased and not available for cross examination, has not been available [514] to these defendants for cross examination.

The Court: Motion denied.

Mr. Hardy: Exception.

HAROLD O. SCHROEDER,

recalled as a witness on behalf of the Government, testified:

I reside in New York City. I am a Special Agent for the Federal Bureau of Investigation. I received my education at Northwestern University, Evanston, Illinois, School of Commerce, specializing in accounting. I have been with the Department of Justice since 1931. Previous to that time I was in public accounting in Chicago. I do accounting work with the Department of Justice, examining bank cases, mail fraud cases, bankruptcy cases, Court of Claim matters, and any type of case involving accounting in which the Government is concerned. That means an examination of the books and records of such companies. I have made an examination of the books and records of the Security Building and Loan Association, the Century Investment Trust

(Testimony of Harold O. Schroeder.)

and the Arizona Holding Company now in evidence in this case.

Mr. Hardy: (On voir dire examination) I have had practical experience as an auditor ever since the day I graduated, with the exception of those three years in Chicago, all of my work has been with the Federal Government. I am not a certified public accountant, never have been. I stated I made an examination of the books of the Security Building and Loan Association, Century Investment Trust and Arizona Holding Corporation, for the purpose of making an audit of those books. The books of those companies which I examined are here in Court. The numbers of the exhibits which I examined are 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 77, 78, 79, 80, 107 to 107-R, 108, 109, 110, 111 to 111-D, 112, 113, 126, 127, 185, 186, 187, and 189 to 202 inclusive, 203, 204. The numbers I have read are solely the records of the Arizona Holding Corporation, [515] the Century Investment Trust and the Security Building and Loan Association. They are not all the records which I have examined in connection with my audit. There are a great quantity of records which I have examined that are not in the court room and not in evidence. They are records of the Overland Hotel Company, public records of Pima County, Maricopa County, Yavapai County, records of the First National Bank of Prescott, records of various banks in the southern part of California and Arizona,

(Testimony of Harold O. Schroeder.)

some of which records are here in evidence, some of which are not, and some of which are not in the court room. I also examined records in Yuma County. I made an examination of the records of banks in which these various companies had bank accounts; Southwest Bank and Trust Company, either in Phoenix or Tucson; the First National Bank of Prescott. I believe all the records of the First National Bank of Prescott are here except certain correspondence files and things of that sort. I did make an examination of the correspondence files of the First National Bank of Prescott. I seem to recall having been at some bank in California, I can't just name it now. I don't remember making an examination of the records of the California Savings and Commercial Bank in San Diego, California. I believe I did make an examination of a bank in San Diego in connection with this case. As far as the Arizona Holding Corporation and the Century Investment Trust are concerned, the books here in court are the only ones I have ever seen of those companies. Now, so far as the Security Building and Loan Association is concerned, there are large binders with thousands of sheets of pass book holders' accounts, and books of that nature that are not here in the court room, which I examined in connection with this case and from which I made my audit. I am acquainted with Ben Dodt, the present receiver of the Security Building and Loan Association.

(Testimony of Harold O. Schroeder.)

Q. Have you made any examination of the books in his custody as such Receiver in connection [516] with this case in your audit which are not in here in court?

A. Well, I don't know what Mr. Dodt has. When I finished with them I turned them back to Mr. R. E. L. Shepherd, and I understand Mr. Dodt got them from him. Now, if he got the books that I turned back to Mr. Shepherd, why, those are the ones I examined.

The witness continuing: I received from Mr. R. E. L. Shepherd the books of the Security Building and Loan Association from which I made my audit. The books of the Arizona Holding Corporation or the Century Investment Trust have been procured by the United States Attorney's office and were here when I came to Tucson in 1934. I previously testified in this case in 1934. My testimony then was all based upon an audit. I have not revised that audit since I testified in that case. The audit remains the same now as then. I made no changes in my audit during the *program* of this case.

Mr. Peterson: The audit I made and which I will testify in regard to, is made on the books now in evidence in this case, and based upon those alone.

Mr. Peterson: Q. From your examination of the books of the Security Building and Loan Association now in evidence, did you determine whether or not Loan 26, known as the Rayburn Loan, is included in the figure of \$193,929.46 set out in the

(Testimony of Harold O. Schroeder.)

financial statements of the Security Building and Loan Association as of December 31st, 1931?

Mr. Peterson: And add to that, Exhibit No. 160, Loans secured by first mortgage on Arizona real estate.

Mr. Hardy: Now, your Honor, we object to that for the reason that it has been testified by the [517] witness that his audit is not based entirely upon the books and records of the corporations named in this indictment which have been introduced in evidence, or which are in Court, but that it has been based upon and is reflected from the examination of other records, books and documents of corporations, or from other sources which are not in evidence, or before this Court, or available.

The Court: That is not the witness' testimony. He said his audit is in connection with the books in evidence, and in connection with that, he made other investigations of other corporations, but his audit is based upon the books and records introduced here in evidence. The objection is overruled.

Mr. Hardy: Exception.

The Witness: I believe that exhibit is dated 1930, rather than 1931.

Mr. Peterson: December 31st, 1930?

A. Yes, Loan 26 is included.

Q. And from your examination of the books in evidence, can you determine whether or not Loan No. 37, known as the A. Y. York loan is included in the figure of \$193,929.46 set out in Exhibit 160

(Testimony of Harold O. Schroeder.)

in evidence, in the amount of loans secured by first mortgages on Arizona real estate?

Mr. Hardy: Your Honor, for the purpose of the record, may we have the same objection to all this testimony without the necessity of repeating it?

The Court: Oh, yes.

Mr. Hardy: And I understand that we have an exception to the ruling of the Court? [518]

The Court: All right.

The Witness: It is.

The witness continuing: From my examination I determined that Loan 41, known as the Dreyfus loan, is included in the figure of \$193,929.46 set out in Exhibit 160 as loans on first mortgages on Arizona real estate. From my examination of the books I determined that Loan 42, known as the Arrington loan, is included in the figure of \$193,929.46 set out in Exhibit 160 as loans and first mortgages on real estate. Loan No. 26, known as as the Reyburn loan, was originally for \$8,700. Loan No. 37, known as the A. W. York loan, was originally made for \$11,500. The amount of the Dreyfus loan, No. 41, is \$32,000. The amount of the Reyburn loan, No. 42, is \$34,000. The balance unpaid on all four of these loans on December 31st, 1930, was \$85,991.56. Referring to Loan 26, known as the Reyburn loan, the first entry that appears on the books appears in the journal and the loan ledger of the Security Building and Loan Association simultaneously on July 21st, 1930, at which

(Testimony of Harold O. Schroeder.)

time the loan of \$8,700, was set up. The journal is Exhibit 72, and the ledger is Exhibit 73. The loan ledger, Exhibit 73, shows that the loan was secured by certain real estate in Township 1 North, Range 2 East, Gila and Salt River Base and Meridian. The loan next appears July 23rd, 1930, at which time out of the loan two checks were issued. Check No. 276 for \$3600.00, and Check No. 5230 for \$1250.00, to the Century Investment Trust. This check No. 276 for \$3600.00 (presenting check to witness). That check was made payable to Century Investment Trust. Check No. 5230 is made payable to Century Investment Trust.

Thereupon Check No. 5230, Government's Exhibit 190, and Check No. 276, Government's Exhibit 107, were read to the jury by counsel for the Government.

The witness continuing: These checks were set up in the cash book by number. On July 26th, 1930, Check No. 279 for [519] \$3500.00 was issued from the proceeds of this loan.

Thereupon Check No. 279, Government's Exhibit 107, was read to the jury by counsel for the Government.

The witness continuing: On August 27th, 1930, Check No. 379 for \$250.00 was issued against this loan.

Thereupon Check No. 379, Government's Exhibit 107, was read to the jury by counsel for the Government.

(Testimony of Harold O. Schroeder.)

The witness continuing: After the issuance of the checks which have just been described, there still remained a hundred dollars unexpended on the loan, so on October 14th, 1930, the Security Building and Loan Association took that, by itself, on its books, as income. On August 27th, 1930, there was paid on Loan 26, up to and including December 31st, 1930, the amount of \$52.30 as principal, and \$60.00 as interest, a total of \$113.10. The entries in the books showed some more payments. On September 27th, 1930, \$52.56 was paid as principal, and \$60.54, a total of \$113.10. On November 26th, 1930, there was paid \$52.93 as principal, and \$60.17 as interest, as interest, a total of \$113.10. On December 20th, 1930, there was paid \$5.40 as principal, and \$119.60 as interest, a total of \$125.00. Now, the payment on principal down to that date totalled \$163.09; all of those items on the books of the Security Building and Loan Association were charged to the Arizona Holding Corporation. There were no entries whatever on any of the books or any place showing any payments to Mrs. A. E. Reyburn on this loan. The balance on this loan as of December 31st, 1930, was \$8,536.91. The books of the company never recorded any place any actual payments from Mrs. A. E. Reyburn. Loan 37, known as the A. W. York loan, first appeared in the journal and the loan ledger of the Security Building and Loan Association, Exhibits 72 and 73, I believe, and the first entry appears on December 4th, 1930, when the loan is set

(Testimony of Harold O. Schroeder.)

up in the amount of \$11,500.00. The loan ledger shows it is secured by certain real estate located in Section 12, Township 17 North, Range 19 East, [520] and Section 10, Township 17 North, Range 20 East, in Navajo County. The next entry in the books is on December 4th, 1930, when there was paid out from the loan on Check No. 660, \$3,000.00, and cash of \$2.00. The books don't show who the cash went to.

Thereupon Check No. 660, Government's Exhibit 112, was read to the jury by counsel for the Government.

The witness continuing: That was all the entires at that time. The next entry appears on December 15th, 1930, when Check No. 714 for \$7500.00 was issued, and at the same time the Security Building and Loan Association took up \$250.00 of that loan as income to itself.

Thereupon Check No. 715, Government's Exhibit 185, was read to the jury by counsel for the Government.

The witness continuing: The next entry was on December 27th, 1930, Check No. 749, where \$650.00 was issued.

Thereupon Check No. 749, Government's Exhibit 186 was read to the jury by counsel for the Government.

The witness continuing: The next entry was on January 3rd, 1931, Check No. 767 was issued for \$102.65. Now, out of that sum, \$52.65 came from

(Testimony of Harold O. Schroeder.)

the loan, and \$50.00 came from the Century Investment Trust.

Thereupon Check No. 767, Government's Exhibit 108, was read to the jury by counsel for the Government.

The witness continuing: These items were set up against loan 37. There were no entries in the books showing that A. W. York ever received any money on this loan. There is nothing shown in the books or records of the company of any payments by A. W. York to the Security Building and Loan Association. The balance due on that loan as of December 31st, 1930, was \$11,454.65, which was due and owing at the close of business December 31st, 1930. Loan 41 first appears in the books and records of the company on the journal and loan ledger, Exhibits 72 and 73. Loan 41 is secured by certain real estate in Section 3, also Lot 3 in Section [521] 3, and Lot 1 in Section 5, Township 9 South, Range 18 West, Gila and Salt River Base and Meridian. Loan 42 appears in the same place. It is for \$34,000. Loan 42 was secured by real estate in Section 3, also Lot 4 of Section 3, and Lot 4 of Section 4, all in Township 9 South, Range 18 West, Gila and Salt River Base and Meridian. Those two loans were set up in the books on December 31st, 1930. With respect to loans 41 and 42, known as the Arrington and Dreyfus loans, practically all of the entries on those loans are on the same date. They were originally set up for \$32,000 and \$34,000, respectively,

(Testimony of Harold O. Schroeder.)

and on the same date, December 31st, 1930; of that total of the two loans, being \$66,000, \$64,680 was credited to the Century Investment Trust, and the balance of \$1320.00 was taken up by the Security Building and Loan Association as income on its own books. Now, on this same date, out of the total of \$64,680.00 that was turned over to the Century Investment Trust, \$59,448.80 was used to pay off three loans already on the books of the company, being Loans Nos. 27, 38 and 39. The next entry was on March 7th and June 18th, 1931. On each date on Loan 41 there was paid \$680.00 in interest by the Arizona Holding Corporation, and on the same dates on loan 42, there was paid \$722.50 as interest by the Arizona Holding Corporation. That was recorded in the journal, page 20 and page 48 in both cases, of Exhibit 72. On loan 27 there was paid a total of \$7,051.88, of which \$44.30 was interest, and \$7,007.51 was principal, being the balance of the loan at that date. Loan 38, there was paid a total of \$9,745.29, of which \$30.29 was interest, and \$9,715.00 was principal, which was the balance of that loan as of December 31st, 1930. And on Loan 39, there was a total paid of \$42,651.63, of which \$90.30 was interest, and \$42,561.33 was principal, which was the balance of that loan on that date. They were charged to the Century Investment Trust pass book account No. 5226, being offset by the credit of the proceeds from Loans Nos. 41 and 42. The books do not show any funds having been paid [522] to Frank

(Testimony of Harold O. Schroeder.)

D. Arrington or Lyda Dreyfus. The books do not record any payments as having been made to the company by Lyda Dreyfus or Frank D. Arrington. There were no payments on principal at all; two items of interest which I testified to were paid by the Arizona Holding Corporation, and not by either Lyda Dreyfus or Arrington. A total of \$66,000 was included in Loans 41 and 42 in the item of Exhibit 160, the financial statement in the amount of \$193,929.46, loans secured by first mortgages as of the date of December 31st, 1930. Loan 27 first appears in the journal and loan ledger. The loan is set up on July 31st, 1930, in the amount of \$9,700. The next entry is to Mrs. A. E. Reyburn and according to the ledger is secured by Lots 8, 9 and 10 of the McNally Tract at Prescott, Arizona. The next entry is on July 23rd, 1930, Check No. 22 for \$4,100. was issued to the Century Investment Trust from that loan.

Thereupon Check No. 22, Government's Exhibit 191, was read to the jury by counsel for the Government.

Mr. Flynn: They were signed by Glen O. Perkins.

The witness continuing: The next entry on this loan was August 28th, 1930, Check No. 382 was issued to the Century Investment Trust for \$3000.00.

Thereupon Check No. 382, Government's Exhibit 107, was read to the jury by counsel for the Government.

(Testimony of Harold O. Schroeder.)

The witness continuing: On October 14th, 1930, Security Building and Loan Association took up a hundred dollars of that loan as income to itself. During this period there were entries for payments against the loan down to and including the final entry, a payment on December 31st, 1930, at which the balance on that loan was taken off of the books by Loans 41 and 42, as I testified before, in the amount of \$9,507.51. That was the total of the loan at the time it was taken up by Loans 41 and 42. Those are all of the entries on that loan and wiped the loan out. There are no entries in the books showing that Mrs. A. E. Reyburn ever received any moneys on this loan. With respect to Mrs. A. E. [523] Reyburn ever having paid anything on this loan, all the payments on this loan, except the last one, when it was charged into the other loan, were made by the Arizona Holding Company. Loan No. 38, known as the Shumway loan, first appears also in the journal and loan ledger and was set up on December 20th, 1930, in the amount of \$11,800.00. The loan ledger does not list any security. The next entry was on December 27th, 1930; out of that loan Check No. 750 was issued for \$7,000.00.

Thereupon Check No. 750, Government's Exhibit 80, was read to the jury by counsel for the Government.

The witness continuing: The next entry was on December 31st, 1930, Check No. 756 was issued for \$2,715.00.

(Testimony of Harold O. Schroeder.)

Thereupon Check No. 756, Government's Exhibit 79, was read to the jury by counsel for the Government.

The witness continuing: The next entry was on December 31st, 1930, when the balance in that loan was shown by the books to have been paid off by the setting up of Loans 41 and 42. There is no record in the books that James M. Shumway ever received any money on that loan. With respect to any record in the books showing that James M. Shumway ever paid anything on that loan, there were no payments whatever paid on that loan, except the final one, when it was taken off with the setting up of those other loans. Loan 39 first appears on the books of the Company in the journal and loan ledger on December 22nd, 1930, at which time it was set up for \$43,000.00. The loan was made to Frank Arrington. The loan ledger does not show there was any security listed on that loan. The loan next appears on the same date, December 22nd, 1930, out of that \$43,000, \$1,239.65 was taken off as interest, and \$41,321.68 went to the Sunset Building and Loan Association, a California corporation. It next appears on December 31st, 1930, at which time this loan was taken off the books by Loans 41 and 42. The books do not show that any portion of this loan was ever paid by Frank Arrington. There were no repayments by Frank Arrington [524] or anyone else, except the final entry when it was taken off by Loans 41 and 42. There are entries in the books of

(Testimony of Harold O. Schroeder.)

the Security Building and Loan Association now in evidence, which I have examined, which show an offset to the item of \$41,321.60 credited to the Sunset Building and Loan Association. The credit to the Sunset Building and Loan Association went into an account of that name in the books of the Security Building and Loan Association, and which wiped off the balance in the account on that date, which was made up of the following items. On May 14th, 1930, the Security Building and Loan Association issued \$10,000.00 worth of full paid investment certificates to the First National Bank of Prescott, Arizona. The \$10,000.00 for that was charged to the account of the Sunset Building and Loan Association. On December 19th, 1930, there was charged to the account of the Sunset Building and Loan Association \$31,169.03, which represented the repayment at that date on Loan No. 6 of the Tucson office, the Overland Hotel and Investment Company of \$30,000.00, plus \$1,169.03 accrued interest. The books show what that item of \$31,169.03 represented. That was the payment of Loan No. 6 of the Overland Hotel and Investment Company, which had previously been set up in the Tucson office. The books show a transfer from the Tucson office to the Phoenix office. That was made December 19th, 1930, and then this entry on the Phoenix books wiped the entry out. Loan No. 6 first appears on the books of the Tucson office of the Security Building and Loan Association, and was first set up on September 23rd,

(Testimony of Harold O. Schroeder.)

1929, amounting to \$30,000.00. It shows where the proceeds of that loan went. The proceeds of that loan of \$30,000.00 was used to pay for the \$35,000.00 draft that went to the first National Bank of Prescott to pick up three notes up there of Joseph E. Shreve, Glen O. Perkins and J. G. Cash. Each of the three notes was for \$10,000.00, making a total of \$30,000.00. The unpaid balance of the loans I have testified in regard to, 26, 37, 41 and 42, which were included in the [525] \$193,929.46 set out as loans on first mortgages in Exhibit 160, as of December 31st, 1930, was \$85,991.56. The total unpaid balance of those loans as of that date was \$30,000.00 more than the paid in capital and surplus of the Security Building and Loan Association as of December 31st, 1930.

The witness continuing: Loan 44 is also in the name of James M. Shumway, and it appears on January 12th, 1931, for \$11,800.00. That is for the same amount and just after the Loan 38 in his name had been taken off of the books. The new loan was set up for \$11,800.00. The loan ledger shows security listed on that as being Lot 3, Block 21, Goldman's Addition to Tempe, Maricopa County, Arizona. The next entry appears on this loan on the same date, January 12th, 1931, there is an entry of \$4,000, which reduced the amount to \$11,800.00, and out of that amount they issued Check No. 808 for \$3,000.00 and took up \$236.00 as income on the books of the Security Building and Loan Association.

(Testimony of Harold O. Schroeder.)

Thereupon Check No. 808, Government's Exhibit 111, was read to the jury by counsel for the Government.

The witness continuing: The next entry is on January 13th, 1931, Check No. 810 for \$1000.00 was issued.

Thereupon Check No. 810, Government's Exhibit 111-A was read to the jury by counsel for the Government.

The witness continuing: The next entry is on January 30th, 1931, there were two checks issued, Nos. 870 and 871 for \$1,696.66 and \$64.54 respectively.

Thereupon Check No. 870, Government's Exhibit 111-B, and Check No. 871, Government's Exhibit 111-C, were read to the jury by counsel for the Government.

The witness continuing: The next entry was on February 2nd, 1931. There was still left in that loan, \$1,802.80, which was disbursed as follows: \$400.00 was deposited to the Century Investment Trust account; \$1,052.80 was deposited to the Arizona Holding Corporation account, and Check No. 879 was issued for \$350.00. [526]

Thereupon Check No. 879, Government's Exhibit 111-D, was read to the jury by counsel for the Government.

The witness continuing: All these checks were charged up against the Shumway loan 44. There is no showing in any of the books that James M. Shum-

(Testimony of Harold O. Schroeder.)

way ever received any moneys on this loan. There is no showing that James M. Shumway ever paid anything to the Security Building and Loan Association. From my examination of the books in evidence there are other loans than the ones I have testified in regard to, in which the proceeds of the loan were paid to the Century Investment Trust or the Arizona Holding Company and not to the makers of the loan. The books of the Security Building and Loan Association do not show any membership certificates were ever issued to the makers of loans or anybody else.

Cross Examination.

Government's Exhibit 79, check dated December 31st, 1930, in the amount of \$2,715.00, is a check payable to James M. Shumway. The check was made payable to James M. Shumway from the Security Building and Loan Association. The check was paid by the Commercial National Bank of Phoenix, Arizona. It was not paid to Mr. Shumway but was paid to the Century Investment Trust. Shumway's endorsement is on that check by "R. F. W." "R. F. W." is Robert F. Watt, an employee of the Century Investment Trust. The check is made payable in the cash book to James M. Shumway, Exhibit 72. The records of the Arizona Holding Corporation show that they received the check, that is on December 31st, 1930, according to journal, page 100, and cash receipt book, page 15, of the Century Investment Trust. This finally ended up

(Testimony of Harold O. Schroeder.)

there, went through all three of them, went through the records of Arizona Holding Corporation. The Arizona Holding Corporation charges the Century Investment Trust for \$2,715.00, and credits the Security Building and Loan Association account for \$2,715.00. There is no endorsement of the Arizona Holding Corporation on this [527] check. The check is marked paid by the Commercial National Bank of Phoenix, Arizona. Government's Exhibit No. 8, is check dated December 27th, 1930, for \$7,000.00, payable to James M. Shumway by the Security Building and Loan Association, drawn upon the Commercial National Bank of Phoenix. That check is endorsed James M. Shumway, "W," Century Investment Trust. The "W" on the checks appears to be Mr. Watt. That is R. F. Watt, the witness who testified for the Government. The check was paid upon the second endorsement of the Century Investment Trust. I know it was paid upon the second endorsement from the face of the record itself. I mean the check, after it was paid. If it had been paid on the first endorsement the second one would not have gotten on there, which is obvious. The Century Investment Trust, endorser appearing on this check, is not the payee named in the check, but they got the money. The payee is James M. Shumway. With reference to Government's Exhibit 111-D, that is a check dated February 2nd, 1931, for the sum of \$350.00, payable to James M. Shumway by Security Building and Loan Association, drawn upon the

(Testimony of Harold O. Schroeder.)

Commercial National Bank of Phoenix. The endorsements on that check are James M. Shumway by "R. F. W." and the Century Investment Trust. The check was honored for payment by the Commercial National Bank. The records of the Security Building and Loan Association specifically show that these checks, being Government's Exhibits 79, 80 and 111-D, are not paid to James M. Shumway. The records of the Century Investment Trust show that they were the ones who got it. The records of the Security Building and Loan Association do not show that these checks were paid to Shumway because the check itself is the record of the Security Building and Loan Association and it shows from the endorsements. There is another book record of these checks. The cash book shows they were made payable to James M. Shumway. That is Exhibit 72. The number of the cash book that reflects that is Exhibit 72. I am referring to Exhibit 72, page 18, under the sub-section "Commercial National Bank, Phoenix, [528] Arizona." It appears opposite Line 79, corresponding to Check No. 79. That is what you are asking about, being a check for \$350.00 made payable to James M. Shumway. The check is dated December 27th, 1930, for \$7,000.00, and payable to James M. Shumway. The records of the Building and Loan Association show on Government's Exhibit 72, James M. Shumway.

Q. Referring to Government's Exhibit 80, that reflects what upon the books of the Security Build-

(Testimony of Harold O. Schroeder.)

ing and Loan Association which you hold in your hands, Government's Exhibit 72?

A. Issued December 27th, payable to James M. Shumway on incomplete loan 38, Check 750 for \$7,000.00.

Q. With reference to the check of December 30th, 1930, in the sum of \$2,715.00 payable to James M. Shumway, being Government's Exhibit 79, what does Exhibit 72, the book of the Security Building and Loan Association, show with reference to that check?

A. On December 31st, 1930, Check No. 756, \$2,715.00 payable to James M. Shumway on incomplete loan No. 38.

The witness continuing: I have an audit record of Loan 38. That is the James M. Shumway loan. That is the loan from which this last check, \$2,715.00 was paid. That loan is set up in the loan ledger of the Security Building and Loan Association, Exhibit 73. Each page is set up separately for the loan, and loan 38 would correspond to page 38. There is a figure here under the column "debits" of \$7,000.00, and then a figure of \$4,800.00. The entry of \$7,000.00 on December 31st, comes from journal page 155 and is Check No. 750. The next entry is \$4,800.00 comes from page 156 of the journal and is made up of the check of \$2,715.00 and an entry of \$2,085.00, wiping off that loan into [529] loans 41 and 42, as shown in the journal page 156. By wiping this loan off is meant the balance of that

(Testimony of Harold O. Schroeder.)

loan was credited into the pass book account of the Century Investment Trust, and at the same time the balance of that loan was charged against the funds in the pass book account which was so created. That is what I call "wiping the loan off". It is not what I call an ordinary business transaction, it is a common term used by auditors generally for that type of transaction. I testified that James M. Shumway did not receive any money from the Security Building and Loan Association and that he did not pay any money into the Security Building and Loan Association from those loan transactions, and I so testify from the books and records of the Security Building and Loan Association. The books and records of the Security Building and Loan Association reflect that he did not receive any money on those loans. It is shown by the fact that all of the money did not go to James Shumway, but it went to a person other than Shumway, hence, he could not have received the loan. It is a negative situation for which there specifically could be no entry. I say that the records of the Security Building and Loan Association do not show that any moneys on those loans went to Shumway; I am confining my testimony now solely to the records of the Security Building and Loan Association. The only source of my answers are the records which were had, the journal, the loan ledger and those checks, and from them I testify that Shumway received no money; they so show. The check which you hand me marked

(Testimony of Harold O. Schroeder.)

Government's Exhibit 80, dated December 27, 1930, is drawn by the Security Building and Loan Association to James M. Shumway for \$7,000.00. That is a record of the Security Building and Loan Association. That is what I stated this morning. That record does not show upon its face that James M. Shumway got that money; it shows, in fact, that J. M. Shumway did not even endorse the check; the fact that his endorsement does not appear upon the back of that check is not the reason that I conclude he did not [530] get the money. The books of the Century Investment Trust show specifically that they got it. I have not guessed at what might have happened to the funds represented by this check. The endorsement of James M. Shumway on this check was put there by Mr. Watt. I know that because I recognize Mr. Watt's handwriting. I recognize the initial "W" underneath the signature here of James M. Shumway. I cannot look at the records of the Security Building and Loan Association and testify from those records and nothing else that James M. Shumway did not receive the \$7,000.00 represented by Government's Exhibit 80. You can't confine it to those specific records, you have to have all of them.

Q. Well, what are the other records you have to have?

A. Do you have the Century Investment Trust cash book here, Exhibit 62?

(Testimony of Harold O. Schroeder.)

Mr. Hardy: No, I don't have the exhibits here, I don't think—I will look and see. You are referring to Government's Exhibit 62?

A. Yes, sir.

Q. Which is the record of the Century Investment Trust?

A. Yes, sir.

The witness continuing: I did not testify that I can tell from the records of the Security Building and Loan Association that James M. Shumway did not get this money represented by this \$7,000 check. You could not take those records solely, and as far as that goes, the check shows on its face it was not endorsed by Shumway, because, as I testified, the endorsement there is in the handwriting of Mr. Watt, and solely by that reason I testify that this endorsement is made by Mr. Watt. I do not know whether or not Mr. Shumway authorized him to make the endorsement. I do not know why Mr. Watt placed Mr. Shumway's endorsement on the back of this check. I do not know from the records. I cannot tell from the records [531] anything about this endorsement. I can't tell anything about the endorsement from any book or document now before this Court. So far as the books and records are concerned I presume this is an unauthorized endorsement of James M. Shumway's signature. I say so far as the books and records are concerned, I don't know. As far as the books and records before the Court are concerned, they do not show that the

(Testimony of Harold O. Schroeder.)

endorsement is authorized. There is nothing in there to show whether it is authorized or not. I am not presuming that this is an unauthorized endorsement of James M. Shumway's signature. I am merely stating that the books do not state whether it was either authorized or unauthorized. The books do reflect the transaction with respect to the \$7,000.00 check, being Government's Exhibit 80. Security Building and Loan Association books do not reflect the transaction in regard to this \$7,000.00, being Government's Exhibit 80, that James M. Shumway did receive the money represented by that check. The books merely show that the check was made payable to him. They show nothing whatever as to his receiving any of the money. It shows the check was made payable to him. Actually the check finally ended up in the Century Investment Trust. You will see that in Exhibit 62. That is true, and the endorsement by James M. Shumway on the back. Government's Exhibit 109 embraces five checks, which represent various transactions.

Q. The check dated May 15, 1931, for \$119.70, made payable to the order of the Arizona Title and Trust Company, what transaction does that check pertain to?

A. I'd have to see the cash book to find out. It should be 72.

Q. You mean of the Security Building and Loan Association?

A. Yes, Exhibit 72.

(Testimony of Harold O. Schroeder.)

(Exhibits 72 and 73 were handed the witness).

[532]

The Witness: Well, I don't see that in here. It would take a long process of elimination—wait a minute. Well, that check *comparatively* relates to checks, 50, 52, 55, 57, 59 and 60, and in addition a part of it was deposited to the passbook account of the Arizona Holding Corporation, \$33.35 being so deposited.

The witness continuing: That is one of the checks from which I made my audit. It apparently relates to those transactions. That is what I take it to be. I have not analyzed the whole day's business to verify it. The check was made payable to the Arizona Title and Trust Company. The cash book says, "Pass Book 5618, \$33.35", which is the pass book of the Arizona Holding Corporation, and also says, "Balance incomplete loans." This check is endorsed by the Arizona Title and Trust Company. They are named payee in it. The check shows that the drawee bank, the Arizona Bank at Phoenix, Arizona, paid this check upon the endorsement of the Arizona Title, Guarantee and Trust Company, and it is not paid upon any endorsement of the Arizona Holding Corporation, the Security Building and Loan Association or the Century Investment Trust, but paid solely upon the endorsement of the payee named in the check. Either part of it was deposited to the pass book account of the Arizona Holding Corporation or \$33.35 came from the pass

(Testimony of Harold O. Schroeder.)

book account. According to the entry here, I can't say which is which. I made the audit based upon those entries but I haven't my working papers with me nor are they available.

Q. Are you testifying now from incomplete working papers or from complete working papers?

Mr. Flynn: At this time, we would like to call the Court's attention before going any further, that this check that counsel is interrogating him about is not one of the checks he testified to on direct examination, and has no [533] connection with any transaction gone into on the direct examination, but is a check picked up in evidence here by counsel, and we submit it is not proper cross examination.

Mr. Hardy: Mr. Flynn, he testified, and the record will so show, that in preparing his audit, he utilized this check among other checks.

Mr. Flynn: We admit that his entire audit involved this check, but he testified nothing about it.

The Court: You had better confine your examination to the checks he identified this morning.

Mr. Hardy: Exception.

The witness continuing: Government's Exhibit 112, 186 and 185, each of which is a check, I testified pertained to the A. W. York loan, which is loan No. 37. Government's Exhibit 185, being a check dated December 15th, 1930, drawn by the Security Building and Loan Association to A. W. York, for the sum of \$7500.00, is reflected on the books of the Security Building and Loan Associa-

(Testimony of Harold O. Schroeder.)

tion, and the cash book, Exhibit 72, of the Security Building and Loan Association, on December 15th, 1930, shows Check No. 714, payable to A. W. York, \$7500.00, on account of Loan No. 37. That is all that book shows with regard to that loan. This particular entry is later picked up in the journal and carried through to the loan ledger, and into the general ledger of the Security Building and Loan Association. The check is indicated upon the records of the Security Building and Loan Association. The check is endorsed by Mr. Watt, also by the Arizona Holding Corporation, R. F. Watt, and by the Century Investment Trust. A. W. York appears on the back of the check with the initial "W" under it. Mr. Watt placed his name upon that check. I recognize his handwriting. I recognize Mr. Watt's handwriting on the signature of A. W. York appearing on this check. I do not know [534] what authority Mr. Watt had to supply the endorsement. I do not know from the books what authority A. W. York had given for Mr. Watt to supply the endorsement. All I know about that endorsement is that I recognize it as being in the handwriting of Mr. Watt, in so far as the books are concerned. In so far as the books are concerned, the check was issued to A. W. York, and in so far as the endorsement is concerned, it is supplied in the handwriting of Mr. Watt, because I am familiar with his handwriting. Mr. York did not receive any credits or benefits from this check because the check was taken up on the books of the

(Testimony of Harold O. Schroeder.)

Arizona Holding Corporation in an entry of December 15th, 1930, which bears the notation in the book, "York loan paid to Century", and the cash received book of the Century Investment Trust showed the receipt of this check from the Arizona Holding Corporation and was then deposited by the Century Investment Trust in a total deposit of \$7,553.33, which, I think, appears in that Exhibit 62 which I referred to before. I have investigated the records of the Century Investment Trust or the Arizona Holding Corporation to see whether or not Mr. York received any benefit from this check. They don't disclose any benefits. They show the receipt of the check, and that is in Exhibit 62, and there is also a record of the Arizona Holding Corporation of the transaction, which appears in Exhibit 69. The transaction appears on page 15 of the cash book, Exhibit 62. The entry under date December 15th, 1930, shows receipt of check made payable to A. W. York for \$7500.00, credited to Arizona Holding Corporation. The entry preceding that, which I read, was a part of it. That is the total of \$7500.00, and the entry appearing above is for \$53.33. I can't tell you what that entry is for. I don't know whether or not it pertains to this York transaction. That is merely the total credit to this account 102 of the Arizona Holding Corporation. I know all that happened on the York transaction. With respect to the item of \$53.00 which I can't account for, it has been about four years since I last saw this book and [535] I

(Testimony of Harold O. Schroeder.)

can't recall this transaction. So far as I can recall it, it has no bearing on the York transaction. As a matter of fact, it is entered under a previous date and I don't know whether or not it pertains to the York transaction. I did not testify it did. I said it is a part of the total which is extended in this column, whether it bears on the York transaction, I don't know. Naturally it would be, it is on the same line the York transaction is on, a total which is extended in accordance with their bookkeeping system. At the moment I can't analyze that total. In my direct testimony I identified altogether three checks of the Security Building and Loan Association relating to the A. W. York loan, being Exhibits 186, 185 and 112. The endorsements of A. W. York on the back of all those checks are supplied by R. F. Watt. I know that is the signature of R. F. Watt. These checks appear to have been paid by the Commercial National Bank in Phoenix, the drawee bank. They are perforated and stamped. In analyzing this York loan for the purpose of making my audit, I can't recall whether I checked any of the records of the Commercial National Bank of Phoenix. I first worked on this audit in connection with the York loan some time between the first of June and the last of August, 1932. I would not necessarily have to verify this transaction with records of the Commercial National Bank of Phoenix. I don't recall whether I did or not. I worked upon the records of the Commercial National Bank

(Testimony of Harold O. Schroeder.)

in Phoenix in connection with the audit I prepared in this case. I could not say specifically in connection with which loans, probably in connection with some of the loans which I have testified to today. I haven't the notes which I made from the records of the Commercial National Bank. I don't know where they are. I don't remember the name of the Arizona National Bank in Phoenix in connection with any of these loans. The records of the First National Bank of Prescott didn't relate to the loans, except in so far as one transaction was concerned. I investigated the records of that bank in connection with that one [536] transaction. I have my work sheets in connection with that. I imagine it is up to the United States Attorney for you to see them. I am referring to the transaction on Loan 6, where the \$30,000 draft of the Overland Hotel and Investment Company was used to pick up the three notes of Mr. Shreve, Mr. Perkins and Mr. Cash. That is set up as Loan No. 6 on the books of the Security Building and Loan Association, Tucson branch. Loan No. 6 of the Overland Hotel and Investment Company is in the amount of \$30,000 and the date is September 23rd, 1929. In the preparation of my audit with respect to this loan I consulted the records of the Security Building and Loan Association and the records of the First National Bank of Prescott. I do not recall any others. I examined the corporate records of the Overland Hotel and Investment Company, in the Santa Rita Hotel office on the main

(Testimony of Harold O. Schroeder.)

floor in Tucson. I traced that loan through the books of the Security Building and Loan Association. The proceeds of that loan in the first instance went to the pass book account No. 115 of the Arizona Holding Corporation. That pass book account is in a bound book with all the others. I think it is here in the court room. I don't know if it has been offered. It is not in this Court as an exhibit but as a record. It is a loose leaf ledger sheet. It is not in evidence in this case. The journal shows the same information. I used the journal and also I used the pass book account and a lot of other records. The journal is before the Court. I examined the daily debit and credit tickets beside the journal and pass book account of the Security Building and Loan Association. They are in evidence. I think that debit slip is in the stack in Exhibit 203; no, that particular ticket is not yet offered. A lot of it was based upon records in evidence but also relative to other records. My answer is that it is prepared from a lot of other records. My testimony in so far as the questions asked by the United States Attorney have been solely confined to the records in evidence. I testified this morning about the loan to the Overland [537] Hotel and Investment Company. My audit shows that the entire \$30,000 represented by the loan found its way to the First National Bank of Prescott. In the audit of the books of the Security Building and Loan Association, the Century Investment Trust and Arizona Holding Corporation, I

(Testimony of Harold O. Schroeder.)

seem to recall the name of a fraternal insurance society in Tucson such as the Alianza Supreme or of a similar name. I did not find from the books and records of the Security Building and Loan Association that part of the loan to the Overland Hotel and Investment Company, Loan No. 6, of approximately eight or ten thousand dollars, went to that fraternal association you have named, in connection with that loan, because the item I am referring to is Check No. 251 of October 8th, for \$9,000.00. That entry appears simultaneously with the \$30,000.00 entry. I don't believe that check is in evidence and I don't think it is in Court. The payee on that check is Alianza Hispano. That check is charged to the Arizona Holding Company pass book No. 115, which is here in Court but not in evidence. I imagine the Arizona Holding Company had the pass book account itself and the ledger sheet. What they did with it, I don't know. I have never been able to find it. The Security Building and Loan Association would have the ledger sheet and the Arizona Holding Corporation would have their pass book. There would be withdrawal tickets and debit tickets. I believe that the Alianza Hispano organization had a first mortgage on that Overland Hotel and Investment Company loan. The books of the Security Building and Loan Association don't specifically reflect that they did have a first mortgage and that part of the proceeds of that loan went to pay off that mortgage. I do not know as a matter of fact that is true.

(Testimony of Harold O. Schroeder.)

Specifically the records show the loan was set up for \$30,000. Simultaneously a \$30,000 draft was issued, both of which went through the pass book account. The pass book account on the transactions which I have testified to is not in evidence. I have testified from it because the entries are in the journal. The journal [538] record is right here. This is Phoenix and Tucson is over here (indicating). The entry was first made in the journal, probably simultaneously in tickets, as to the setting up of the loan is here in Court. The ticket as to the other items I don't know if that is here or not. I am prepared to testify positively that all the proceeds of that loan, being some \$30,000, went to the First National Bank of Prescott.

Mr. Hardy: Now, may it please your Honor, I desire to make a motion to strike all of the testimony of the witness Schroeder based upon his testimony and his audit generally, for the reason that it now appears that his audit is made with respect to the transactions about which he testified upon the records of corporations not named in the indictment, and upon records of corporations which are neither in evidence nor before this Court.

The Court: The motion is denied.

Mr. Hardy: Exception.

Redirect Examination.

In so far as matters that I testified to on direct examination was based upon my audit which I

(Testimony of Harold O. Schroeder.)

made, and that audit was made solely from books and records in evidence in this case.

The Court: You testified to that once.

Recross Examination.

On cross examination I think mention was made of some other items, but they were not offered, no reference was made to them. Records of the First National Bank of Prescott and the First National Bank of Phoenix and the Overland Hotel and Investment Company were mentioned but no reference was made to them. I mentioned I examined them. Records of the First National Bank of Prescott are in evidence and in connection with the audit which I made. [539]

C. K. FIERSTONE,

recalled as a witness on behalf of the Government, testified:

Redirect Examination.

I have been with the Federal Bureau of Investigation, the Department of Justice, going on seven years. Prior to that I was doing public accounting work. The nature of my connection with the Federal Bureau of Investigation is performing accounting investigations in matters in which the United States has an interest, such as violations of the Banking Act, Bankruptcy Act, Mail Fraud cases, Anti-Trust cases and Bankruptcy cases. My work in connection

(Testimony of C. K. Fierstone.)

with those investigations require the auditing of books and accounts of corporations, and National Banks, and other organizations. I have made an examination and audit of the books, accounts and records of the Security Building and Loan Association, and I am now referring to the books and records of that corporation which are in evidence in this case. My audit was based upon those books and records of that company in evidence in this case. I have also made an investigation and examination and audit of the books, records and accounts of the Century Investment Trust; that is, the books and records in evidence. I examined other books and records here in evidence of the Arizona Building and Loan Association or the Arizona Holding Company. My audit is based upon those books and records. The books and records of all of those companies which are in evidence here are sufficient upon which to base and make an audit of the accounting of those companies.

Mr. Hardy: (On voir dire examination) I am a graduate of the George Washington University in Washington, D. C. Accounting was included in the course I studied there. I hold a degree of Bachelor of Arts of 1928, and Master of Arts of 1929, from that University. Prior to going to college I had taken a correspondence course in accounting. A good many years ago I went to a school of accountancy in Washington, D. C. I think I included [540] accounting in some night school studying that I was

(Testimony of C. K. Fierstone.)

doing in some school in Washington, D. C., a business school. I am not a certified public accountant. On graduating from college I went to work in New York for Arthur Anderson and Company, a firm of certified public accountants and auditors. For the last seven years I have confined my duties to work with the Federal Government. The audit which I prepared for this case was made in the early part of 1933. I have not made any changes in that audit and the audit is complete. I have made no changes in that audit during the progress of this trial. So far as I know, I have all the notes from which I made my audit. The audit which I prepared for this case was made entirely from books and records which are now in evidence, and not from any other sources whatever. I did not consult any other source than those documents which are here in evidence for the purpose of this audit. During the course of the investigation I may have conferred with a great number of people and examined whatever documentary evidence they may have had. I don't recall specifically any instances that may have been, and any figures from that did not enter into my working papers. I had no discussion with other people concerning the investigation. I audited all the books and records of the Security Building and Loan Association introduced in evidence here. I may have examined some others, probably during the course of the former trial in Tucson in 1934. I don't recall just how many books there were, but if there were

(Testimony of C. K. Fierstone.)

some other books I may have *look* at them, but anything from them did not enter into my audit. Those books, when I examined them, were in the Clerk's office, in Tucson, I believe. It is possible that the books in his office at that time have not been introduced in evidence in the trial of this case. I don't recall specifically that did happen or that there were any books there that are not here. I imagine that there are other books and records of the Security Building and Loan Association that have not been introduced in evidence in this case. I may [541] have had access to them, I don't recall that I have gone over them during the trial and some time previous to the trial of this case. I do know there are other books and records of the Security Building and Loan Association which have not been introduced in evidence in this case. I would not know whether there are books, records and documents of the Security Building and Loan Association now in this building. There may be books, records and documents of the Security Building and Loan Association accessible to myself in the office of the United States Attorney on the second floor of this building. I have not looked at them. I could not state definitely there are such books and records. I cannot answer whether there have been in the last few days. I have never investigated any books, records or documents of the Security Building and Loan Association in the office of Ben Dodt, the Receiver of that Association. My audit relates to the

(Testimony of C. K. Fierstone.)

books and records of the Century Investment Trust as well, and of the Arizona Holding Corporation. My audit is predicated upon books and records of the Security Building and Loan Association, Century Investment Trust and Arizona Holding Corporation. All the books and records of those companies are here in evidence from which I made my audit. My audit is not made from any other source or any other information than those books and records.

Mr. Flynn: I will ask that your answer be based upon your audit of the books and records in evidence in this case, so I won't have to repeat that every time I ask a question.

The witness continuing: (On redirect examination) I can state the different items that go into making up this one item of Surplus and Undivided Profits of \$7,719.43, appearing in Government's Exhibit 160, which is a pamphlet which has been read to the jury, containing a financial statement of the Security Building and Loan Association. That figure is the net result arrived at after adding the income of the Security Building and Loan Association [542] tion, according to its books, for the twelve months ending December 31st, 1930, which income, according to the books, amounts to \$17,086.41, and subtracting from that the expense of the Security Building and Loan Association for that period, which totalled \$14,179.83, it leaves a net profit for the year 1930 of \$2,906.58. From that figure is de-

(Testimony of C. K. Fierstone.)

ducted the net loss for the Phoenix office of the Building and Loan Association for the previous year of \$187.14, and adding in a capital surplus figure of \$5,000.00. Those figures added together, and with the subtraction of the loss shown on the books for the year 1929, make the balance of \$7,719.43 as shown in this statement. The capital surplus of \$5,000.00 was written up at the time the company was organized back in the early part of 1929.

Mr. Hardy: (On voir dire examination) I am not reading from a summary now. I was reading the figures but not in response to the last question, reading from a summary of my work sheets. These are my work sheets and I do not have copies of them.

Mr. Flynn: (The witness continuing on direct examination) The Security Building and Loan Association had an operating loss for the two year period ending December 31st, 1930, of \$21,663.10. The books of the Security Building and Loan Association of the Tucson office, for the year 1929, reflect a loss of \$1,513.65. That loss was charged to the Century Investment Trust. They picked it up on their books and added it to the cost of their investment in the stock of the Security Building and Loan Association. During 1930, the Century Investment Trust paid many expenses of the Security Building and Loan association, according to an account carried on the books of the Century Investment Trust, entitled "Security Building and Loan Association

(Testimony of C. K. Fierstone.)

Expenses", which amounted to \$21,868.88. Different items of expense went into that account, including salaries, premiums, sundry delivery and other expenses, Mesa office, salaries, rent and expenses, advertising and sundry supplies. Those two figures added make \$23,382.53, [543] which would be the total loss of the Security Building and Loan Association to that date. Deducting from that the figure reported as surplus and undivided profits of the Building and Loan Association, according to the statement of \$7,719.43 results in a deficit on December 31st, 1930, of \$15,663.10, which includes the capital surplus of \$5,000.00. Putting that back, it results in an operating loss for the Building and Loan Association as of December 31st, 1930, of \$21,663.10. That operating loss covers the entire life of the company up to that date.

Mr. Flynn: If the Court please, I think that completes the examination of this witness as to the books of the Security Building and Loan Association. The examination as to the Century Investment Trust will be much longer and much more involved.

The witness continuing: I wish to explain or correct my statement as to the amount of operating loss of the Security Building and Loan Association up to and including December 31st, 1930. Instead of \$21,663.10, the correct figure is \$20,663.10.

Q. Now, Mr. Fierstone, based upon your examination of the books of account of the Century Investment Trust Corporation and confining your

(Testimony of C. K. Fierstone.)

answers to the facts as shown by those books, I will ask you to give the capital set-up of the Century Investment Trust, the amount authorized—stock authorized and the classification——

Mr. Hardy: Your Honor, we now object to the witness giving any testimony based upon an audit of the books of the Century Investment Trust for the reason that it has been testified by a witness for the Government, Mr. Watt, that these books, in their entirety, were rewritten by him, and therefore, they are not the original or first permanent entries of the books of the Century Investment Trust, and the [544] Government's witness, Watt, further testified that the records and data and memorandum from which the books were re-written, were filed with other books, records and memorandum of the Century Investment Trust; and for the further reason that it has not been shown by the Government thus far that these defendants, or either of them, caused the books of the Century Investment Trust to be re-written, or that they knew that they were re-written, or that they acquiesced in their re-writing them; therefore, generally, the books are hearsay, incompetent, irrelevant and not the best evidence as to the defendants on trial.

The Court: Overruled.

Mr. Hardy: Exception.

The witness continuing: The total authorized capital of the Century Investment Trust was 1,000,000 shares divided into 300,000 shares of preferred

(Testimony of C. K. Fierstone.)

stock, 100,000 shares of Class A stock, and 600,000 shares of common stock. Basing my answer on the same source of information, the books in evidence here which I have examined, there were issued by that company during its existence and lifetime 12,874 shares of preferred stock, 50,414 shares of Class A stock, and 362,874 shares of common stock. There were issued to individual public subscribers by the Century Investment Trust, 2,842 shares of preferred stock, 14 shares of class A stock, and 2,842 shares of common stock. There were issued to the Arizona Holding Corporation, 4,000 shares of preferred stock, 400 shares of class A stock, and 4,000 shares of common stock. There were issued to the Century Corporation, 6,032 shares of preferred stock, 50,000 shares class A stock, and 356,032 shares of common stock. Under date of November 8th, 1929, the books of the Century Investment Trust record the sale to the Century Corporation of 2,000 shares of preferred stock and 2,000 shares of common stock for \$42,000.00 cash. On November 9th, 1929, the books record a pay- [545] ment to the Century Corporation of \$40,000.00 in payment of a note to the Commonwealth Building Company of \$33,000.00, and 56 shares of the City National Bank stock for \$7,000.00. With respect to the City National Bank, that item is variously referred to. It is sometimes called Citizen, sometimes City, and sometimes State Bank. Under date of November 12th, 1929, the books reflect the deposit by the

(Testimony of C. K. Fierstone.)

Century Investment Trust in the First National Bank of Prescott, Arizona, of \$40,600.00.

Mr. Flynn: Now, then, I will ask you if there are any entries in the books of the Century Investment Trust showing any transactions between the Century Investment Trust and the Century Corporation on November 8th of 1929, in addition to the ones you have already testified to?

Mr. Hardy: You say "Century Corporation"?

Mr. Flynn: Yes.

Mr. Hardy: Now, we object, your Honor. It calls for testimony from a witness with regard to a corporation not named in the indictment, an unrelated corporation, the transaction evidently between the Century Investment Company and the Century Corporation, there not being as yet any foundation laid for testimony with respect to the Century Corporation.

The Court: Overruled.

Mr. Hardy: Exception.

The witness: Under date of November 8th, 1929, the journal of the Century Investment Trust records the issuance of 350,000 shares of common stock at a valuation of \$350,000.00, and 50,000 shares of class A stock at a valuation of \$50,000.00 in exchange for——

The witness continuing: According to that particular entry, it is recorded to set up exchange of stock with the Century [546] Corporation, San Diego, California. That stock of the Century In-

(Testimony of C. K. Fierstone.)

vestment Trust was exchanged for 6,500 shares of the preferred stock, and 7,500 shares of the common stock of the Southwest Union Securities Corporation, which were set up on the books of the Century Investment Trust at a valuation of \$650,000.00. As a part of the same entry, there was written a capital surplus of \$100,000.00 and a reserve of \$50,000.00.

Q. Then the amount—I will ask you this, if the amount—how the amount written up to capital surplus, the amount written up on the contingent fund and the amount written up in the reserve, the total of these three items, compares with the difference between the \$650,000.00 valuation of the Southwest Union Securities stock, and the valuation of the stock issued by the Century Corporation:

Mr. Hardy: Now, your Honor, there has been no testimony with respect to the \$650,000.00 valuation of the Century Investment Company's stock. The question assumes something which is not in evidence and again it is leading and suggestive.

The Court: He may answer.

Mr. Hardy: Exception.

The Witness: Well, the sum of the three items, the capital surplus, contingent fund and reserve equals the difference in the valuation placed on the Southwest Union Securities Corporation stock and the value at which the stock which the Century Investment Trust was recorded.

The witness continuing: Under date of November 15th, 1929, there is recorded a sale to the Cen-

(Testimony of C. K. Fierstone.)

Century Corporation of 1,416 shares of preferred stock at a valuation of \$28,320.00; 1,416 shares of common stock at a valuation of \$1,416.00, and the writing up of capital surplus of \$5,664.00. The books record the sum of [547] \$35,400.00 was received in cash for this stock. The value of the preferred stock sold on that date, and the common stock, and the amount of write up of capital surplus total \$35,400.00. The books at the same time record that this \$35,400.00 was spent by buying from the Century Corporation, 500 shares of the First National Bank of Prescott stock for \$101,400.00, and the assumption of obligations by the Century Investment Trust on notes payable amounting to \$66,000.00. Those notes are recorded as \$28,500.00 to the Boatmen's Bank at St. Louis, and \$12,500.00 and \$25,000.00 to the Western National Bank of Los Angeles. Under date of November 15th, 1929, there is recorded a sale by the Century Investment Trust to the Arizona Holding Corporation, of 4,000 shares of preferred stock, 4,000 shares of common stock, and 400 shares of class A stock for \$100,000.00. At that time capital surplus amounting to \$15,600.00 was written up. The 4,000 shares of preferred stock, being valued at \$80,000.00, the 4,000 shares of common stock at \$4,000.00, and the 400 shares of class A stock at \$400.00. The total amount of the value of the preferred and the value of the common stock sold, and the value of the class A stock sold, and the amount written up in the capital surplus is

(Testimony of C. K. Fierstone.)

\$100,000.00. The books of the Century Investment Trust record the expenditure of the \$100,000.00 cash by buying from the Arizona Holding Corporation a \$38,540.07 note, a trust agreement at a discount of \$6,040.07, a second mortgage of G. O. Perkins amounting to \$1,660.68 at a discount of \$660.68; bonds of the Santa Rita amounting to \$9,100.00 at a discount of \$6,200.00, and the purchase of 350 shares of stock of the Security Building and Loan Association at \$60,000.00. The total amount of those purchases, less discount, is \$100,000.00. I examined the books of the Arizona Holding Company relative to this transaction. The Arizona Holding Corporation books reflect the receipt of \$100,000.00 cash from the Century Investment Trust on November 15th, 1929, received in the sale of \$9,100.00 worth of Santa Rita bonds sold at that value; [548] a \$38,540.07 note of the Tucson Realty and Trust Co., sold at that value; the G. O. Perkins mortgage \$1,660.68 sold at that value, and the sale of 400 shares of Security Building and Loan stock at \$50,000.00. There is also recorded profit on the Security Building and Loan stock amounting to \$699.25. The books of the Arizona Holding Corporation record that the \$100,000.00 was spent by paying it to the Century Investment Trust to buy 4,000 shares of its preferred stock for \$95,600.00; 4,000 shares of common stock for \$4,000.00; and 400 shares of class A stock at \$400.00; the total amount being \$100,000.00. Those entries in the books of the Arizona Holding Cor-

(Testimony of C. K. Fierstone.)

poration cover the same transaction as the entries covering the same transaction in the Century Investment Trust books and are all recorded as of November 15th, 1929. The books of the Century Investment Trust, under date of November 20th, 1929, record the sale to the Century Corporation of 1,368 shares of preferred stock for \$27,360.00; the sale of 1,368 shares of common stock for \$1,368.00; and the writing up of capital surplus \$5,472.00. This stock is recorded as having been sold for \$34,200.00. It is recorded as having been received in cash. The total amount of those three items is \$34,200.00. The books of the Century Investment Trust show \$34,200.00 was spent by buying from the Century Corporation stock of the Arizona Holding Corporation in the amount of 342 shares of preferred stock and 171 shares of common stock, for the total sum of \$34,200.00. The books of the Century Investment Trust, under date of December 28th, 1929, record the sale to the Century Corporation of 1,248 shares of preferred stock for \$24,960.00; the sale of 1,248 shares of common stock for \$1,248.00; and writing up of capital surplus of \$4,992.00, the stock being sold for \$31,200.00, which is recorded as having been received in cash. The total amount of those three items, the value of the preferred stock, the value of the common stock, and the write up of capital surplus total the amount recorded as received from the Century Corporation. The disbursement of this [549] \$31,200 is recorded

(Testimony of C. K. Fierstone.)

as having been that day buying from the Century Corporation stock of the Arizona Holding Corporation in the amount of 312 shares of preferred stock and 156 shares of common stock, for a total valuation of \$31,200.00. On December 30th, 1929, the Santa Rita bonds amounting to \$9,100.00, and the G. O. Perkins mortgage in the amount of \$1,660.68, were exchanged for the note of J. H. Shreve amounting to \$10,760.68. At the same time the company took up as an earned profit or discount on the original purchase of those securities, the sum of \$3,260.68. The difference in the amount for which those assets were purchased and the amount of the J. H. Shreve note was taken up as an earned discount. On December 20th, 1930, there is recorded the disposition of the Tucson Realty & Trust agreement of \$38,540.07; the stock of the First National Bank of Prescott then being carried at \$113,670.54. That is the same stock of the First National Bank of Prescott, which was required at the value of \$101,400.00. The Commonwealth Building note of \$33,000.00; the City Bank stock of \$7,000; the stock of the Southwest Union Securities Corporation then being carried at \$635,580.50; some notes of the Southwest Union Securities Company amounting to \$7,500.00; stock of the Arizona Holding Corporation amounting to \$68,300.00, and there was received in exchange a note of the Arizona Holding Corporation, amounting to \$370,000.00, and stock of the Guardian Western Company amounting to \$467,-

(Testimony of C. K. Fierstone.)

000.00. As a part of that transaction there was liquidated an account receivable from the Overland Hotel Investment Company amounting to \$23,246.66; the release from the obligation of a note to the Boatman's Bank of \$28,500.00, and the balance then being carried as due the Western National Bank amounting to \$34,000.00; liability of an open account to the Century Corporation amounting to \$20,370.40, and there was taken off as earned discount in this transaction, \$5,914.40 and as interest earned, \$8,752.69 and \$6,500.00 in cash was paid out. Then on June 30th, 1931, as a part of the transaction that day, the notes of the [550] Arizona Holding Corporation then amounting to \$383,094.04 were released and there was received \$378,000.00 worth of stock of the Guardian Western Company. There is also a charge against the accounts receivable to the Arizona Holding Corporation of \$11,586.07, and on December 16th, 1931—

Mr. Hardy: We object to any testimony, your Honor, after October 24th, 1931, because testimony after that date is not within the confines of the Bill of Particulars or the indictment.

The Court: Go ahead.

Mr. Hardy: Exception.

The Witness: On December 16th, 1931, the stock of the Guardian Western Company, then being valued at \$845,000.00, was sold along with the other assets of the company to the Arizona Holding Corporation, this stock being sold for \$231,145.05.

(Testimony of C. K. Fierstone.)

The witness continuing: That \$231,145.05 was the purchase of this Guardian Western stock. Well, at that time the assets of Century Investment Trust were sold to the Arizona Holding Corporation and the liabilities were transferred, and the Century Investment Trust received a note from the Arizona Holding Corporation for the difference between the two, amounting to \$250,000.00. The books do not record anywhere the payment of the note of the Arizona Holding Corporation to the Century Investment Trust. I believe that is still an asset of the company.

Mr. Flynn: Now, can you tell from the books, Mr. Fierstone, what became of the stock of the Building & Loan Association which was held by the Century Investment Trust?

The Witness: On December 16th, 1931, it was being carried at a valuation of——

Mr. Hardy: Now, we make that same objection, your Honor. It is a transaction which occurred [551] after the last date in the Bill of Particulars.

The Court: He may answer.

Mr. Hardy: Exception.

The Witness: On December 16th, 1931, it was being carried at a valuation of \$99,457.50 and on that date it was charged off as a loss.

The witness continuing: The books show it was originally purchased on November 15th, 1929, for \$60,000.00. Referring to how the books record the value of that stock, it was built up to \$99,457.50.

(Testimony of C. K. Fierstone.)

Well, on December 31st, 1929, the Tucson office of the Building and Loan Association had a loss of \$1,513.65, which was assumed by the Century Investment Trust and added to the cost of this stock. On October 31st, 1930, the Century Investment Trust had spent \$17,552.39 as expenses or advances to the Security Building and Loan Association during the preceding year, so that sum was added to the cost of the stock, and on October 31st, 1931, the sum of \$20,391.46 was also added to the valuation of that stock, representing sums paid out as expenses and advances to the Security Building and Loan Association during the preceding year. Those several additions, plus the original cost, add up to \$99,457.50. The Century Investment Trust had been in business, as evidenced by the books of the company on December 31st, 1929, two months. The first stock was issued on November 8th, 1929. The dividend dates and the amounts paid are: In April, 1930, \$6,918.69; July, 1930, \$7,561.75; October, 1930, \$3,334.40; January, 1931, \$3,658.00; April, 1931, \$3,699.20.

Q. Now, on these dates, or on any of them, Mr. Fierstone; these dividend paying dates, were dividends paid on all outstanding stock of the same classes as that upon which the dividends were paid that you testified to?

Mr. Hardy: Now, your Honor, we object to that, because there is nothing in the records to [552] show that it was a requirement of the corporation to pay

(Testimony of C. K. Fierstone.)

dividends in the manner asked by Mr. Flynn. There should be some foundation laid here as to what their requirements were, either from the charter or the by-laws or other documents of the corporation in respect to the payment of dividends.

The Court: He may answer.

Mr. Hardy: Exception.

The Witness: No, sir.

Mr. Flynn: Were any dividends paid on stock held by the Arizona Holding Corporation or the Century Corporation of the same class as the stock upon which the dividends were paid?

Mr. Hardy: Your Honor, that would be, it seems to me, an impossibility to ask this witness whether dividends were paid by the Century Investment Trust on stock held by the Arizona Holding Corporation.

The Court: Well, he can testify whether the books reflect against this payment.

Mr. Hardy: Exception.

The Witness: There is nothing in the books to show any such payment of dividends.

The witness continuing: The total number of dividends paid by the Century Investment Trust during its existence was \$30,130.20.

Q. Now what would have been the amount of money necessary to have paid dividends on all of the outstanding stock of the same class as that upon which the dividends were paid?

(Testimony of C. K. Fierstone.)

Mr. Hardy: We object, your Honor, because there is nothing in this record which shows how dividends should be paid, and furthermore, it is leading [553] and suggestive.

The Court: He may answer.

Mr. Hardy: Exception.

A. It would have required a sum in excess of approximately \$280,000.00.

The witness continuing: The total amount of earnings of the company up to April, 1931, was \$35,705.20.

Q. Then as a matter of mathematics, Mr. Fierstone, what was the difference between the earnings of the company up to April, 1931, and the amount of money necessary to have paid dividends on all of the outstanding stock of the same class as that stock upon which dividends were paid up to that time?

Mr. Hardy: Now, we object, your Honor. There is nothing yet in the record which shows to your Honor and to the jury how dividends were to be paid, and to whom they were to be paid, the order of payment or the preference——

The Court: Well, as I understand the witness' testimony, dividends were paid upon stock held by individuals, while on the same class of stock held by these correlated companies, no dividends were paid, isn't that a fact?

Mr. Flynn: That is a fact.

Mr. Hardy: There is nothing to show here that there wasn't a waiver or any other condition excus-

(Testimony of C. K. Fierstone.)

ing that payment. The Century Investment Company, insofar as this record shows, may have reacquired this stock.

The Court: Go ahead.

Mr. Hardy: Exception.

The Witness: There is a difference of [554] approximately \$245,000.00.

(At this point the witness Fierstone was temporarily excused, and the Government's witness, Lulu Gatlin, was called to testify.)

LULU GATLIN,

called as a witness on behalf of the Government, testified:

I reside at 396 South Stone, Tucson, where I have lived over thirty years. I was living at 396 South Stone in the year 1931. I received Government's Exhibit 179 and 180, which is a letter and an envelope, through the United States mail, at my address in Tucson. I received Government's Exhibits 181 and 182, being a letter and an envelope, through the United States mail, at 396 South Stone, in Tucson. I think I received them at the approximate date upon the letter. The letter was enclosed in the envelope. I recall receiving Government's Exhibits 181 and 182. The letter was enclosed in the envelope.

Mr. Peterson: We offer Government's Exhibits 179, 180, 181 and 182 for identification in evidence.

(Testimony of Lulu Gatlin.)

Mr. Hardy: We object to the receipt of the exhibits for identification in evidence, for the reason that as yet no proper foundation has been laid for the admission of them as against these defendants, and the additional reason that they purport to be signed by a person other than the defendants now on trial, that as to them they are irrelevant, incompetent and immaterial and have not been shown that these defendants on trial had anything to do whatever with the transaction enumerated in these letters.

The Court: Overruled.

Mr. Hardy: Exception. [555]

Thereupon Government's Exhibits 179, 180, 181 and 182 were received in evidence.

GOVERNMENT'S EXHIBIT 179,

being letter written on stationery of Century Investment Trust, Phoenix, Arizona, April 13th, 1931, addressed to Stockholders, signed Century Investment Trust by D. H. Shreve, which is in full substance as follows: "Enclosed you will find your dividend check for the first quarter of 1931. The checks are fifteen days late for which we are sorry, but we feel that every stockholder will appreciate the checks in view of general conditions, when but few companies are able to pay dividends. It is a source of much satisfaction to know that the stockholders of the Century Investment Trust are loyally assisting the Company. Many are using the Security

(Testimony of Lulu Gatlin.)

Building and Loan Association, thus helping to build up this splendid association. Many of you have given us insurance and have directed your friends to us. We have installed a regular Insurance Department, writing all lines of insurance such as fire, automobile, life, burglary, etc. With the able assistance of every stockholder, this department can be made to pay the entire overhead of the Company. Thanking you for your loyalty and wishing you success, we are Yours very truly,".

GOVERNMENT'S EXHIBIT 180,

which, abstracted to the issue, is in full substance as follows: Envelope of Century Investment Trust addressed to Mrs. Lulu Gatlin, 396 South Stone Ave., Tucson, Arizona, post-marked Tucson, Arizona, April 15, 1931, postage stamp affixed.

GOVERNMENT'S EXHIBIT 181,

being letter written on stationery of Century Investment Trust, addressed Phoenix, Arizona, January 2, 1931, to Mrs. Lulu Gatlin, 396 South Stone Ave., Tucson, Arizona, signed Century Investment [556] Trust by D. H. Shreve, which is in full substance as follows: "Herewith we hand you dividend check on your preferred stock of Century Investment Trust. We are very happy to be able to pay you this dividend in the face of financial conditions over the country. The Century Investment Trust has had a good year and the Directors believe that

(Testimony of Lulu Gatlin.)

our loyal stockholders have been of great help. As you know one of our sources of income is through the Security Building and Loan Association, which has made an excellent growth during the past year. We ask that you extend to the Security Building and Loan Association a helping hand, and this may be done by depositing your funds or by encouraging your friends and acquaintances to open accounts. We write all lines of insurance, and if you have not already placed yours with the Company we would be glad to handle it for you. Wishing you a happy and prosperous New York, we are Sincerely yours,
Encl. 1."

GOVERNMENT'S EXHIBIT 182,

which, abstracted to the issue, is in full substance as follows: Envelope of Century Investment Trust, Phoenix, Arizona, addressed to Mrs. Lulu Gatlin, 396 South Stone Ave., Tucson, Arizona, Jan. 5, 1931, postage stamp affixed.

Thereupon Government's Exhibits 179, 180, 181 and 182 were read to the jury by counsel for the Government.

C. K. FIERSTONE,

resumed the witness stand and testified as follows:

Cross Examination

I do not desire to make any corrections to the testimony I gave this morning. In preparing the data

(Testimony of C. K. Fierstone.)

which I testified to this morning, I only consulted the books of the Century Investment Trust and Arizona Holding Corporation which are in evidence. The books of the Century Investment Trust and the Arizona Holding [557] Corporation record many transactions about which I have not testified at all, and such books record many transactions between the Arizona Holding Corporation and the Century Investment Trust about which I have not testified at all. As far as the final result would be concerned, there are not many entries in the books of the Arizona Holding Corporation and Century Investment Trust with respect to transactions to which I have testified, which I have omitted in my testimony. I believe most of the entries in the books of the two companies have to do with each other. There are many entries in the books of the Arizona Holding Corporation and the Century Investment Trust which have to do with numerous other transactions than transactions between themselves. In the preparation of my data and the testimony which I gave on direct examination, I made reference to the City National Bank, First National Bank of Prescott, the Commonwealth Building Company, the Century Corporation, Southwest Union Securities Corporation, Guardian Western Company, Tucson Realty and Trust Company, Santa Rita Bonds, Overland Hotel and Investment Company, the Boatmen's National Bank, St. Louis, and the Western National Bank of Los Angeles. All those companies you men-

(Testimony of C. K. Fierstone.)

tioned, their names appear in these books at one point or another as the label of some transactions; that is to say, there is nothing in these books indicating that these companies had transactions with any of those companies, but there are recorded in these books numerous transactions which involve those names. Notes of one or stocks of another. It isn't true that there were transactions between the companies which you named and the Century Investment Trust and the Arizona Holding Corporation. Not necessarily with some of them. No transactions. I don't know why the names of those companies you have enumerated appear upon the books of the Century Investment Trust or the Arizona Holding Corporation. I didn't testify that the Century Investment Trust did not have any transaction with the First National Bank of Prescott. I said that the books of the [558] Century Investment Trust reflect that they had bought some stock of the First National Bank of Prescott. That is not necessarily a transaction with that bank. They didn't buy stock from the bank. The name of Southwest Union Securities Corporation was mentioned. Apparently Century Investment Trust loaned the Southwest Union Securities Corporation a thousand dollars at one time. There was a transaction with the Southwest Union Securities Corporation. I did not make any investigation of the books of the Southwest Union Securities Corporation with respect to that transaction. I covered transactions with the Century

(Testimony of C. K. Fierstone.)

Corporation in the issuance of stock, the purchase of some assets from the Century Corporation on the same day that the stock was sold to them. It does appear on the books of the Century Investment Trust a transaction with the Century Corporation, which is under date of November 8th, 1929. I did not make any investigation of the books of the Century Corporation with respect to that transaction. I confined my investigation solely to the books of the Century Investment Trust. I did not discuss that transaction. Naturally since we were working together on the same case, Mr. Schroeder and I discussed many things together. I did not utilize any of his notes or his audit for the purpose of running through any of the testimony which I have given here. The issuance by the Century Investment Trust of 12,874 shares of preferred stock, 50,114 shares of Series A stock, 362,874 shares of common stock, is one of the accounts in the books of the Century Investment Trust. That is the sum of the accounts labelled 200-A, 201-A, 202-A for several months in the cash received part of Government's Exhibit No. 62, part of which record is also contained in Voucher No. 2, which is a part of Government's Exhibit No. 63. Those are the only records which I investigated for the purpose of determining that issue of stock. I don't recall that any of that stock was issued to J. H. Shreve and A. C. Shreve. The three stockholders ledgers listing the stock issue by individual name, also contained a record of stock is-

(Testimony of C. K. Fierstone.)

sued, which I [559] consulted. In respect to my testimony concerning the audit of the books of the Security Building and Loan Association, Mr. Flynn called my attention to Government's Exhibit 160, which is a financial statement of the Security Building and Loan Association as of December 31st, 1930, and which was enclosed with this letter marked Government's Exhibit 159. I did not testify with respect to Government's Exhibit 160, which is the financial statement of the Security Building and Loan Association as of December 31st, 1930, that the operating loss as shown from the books of the Security Building and Loan Association for the years 1929 and 1930, was in the amount of \$20,663.10; not from the books of the Security Building and Loan Association alone, because they don't contain the whole story; that is, they do not contain all the expenses of the Building and Loan Association. I also consulted books of the Century Investment Trust. With respect to my audit in regard to this statement, being Government's Exhibit 160, it is my impression that that testimony is based upon the books of all three of these companies. My audit of this financial statement, being Government's Exhibit 160, included books of the Century Investment Trust. I don't recall to what extent anything in the Arizona Holding Corporation may have affected that, but, as I said before, I examined the books of all of these companies which are here. The books of the Security Building and Loan Association do not show the

(Testimony of C. K. Fierstone.)

operating loss for the years 1929 and 1930 of \$20,663.10. It was necessary for me to investigate other books to arrive at that figure, not the books of the Security Building and Loan Association. The Tucson office of the Security Building and Loan Association showed a loss, according to their own books, during the year 1929, of \$1,513.65, which they charged to the pass book account of the Century Investment Trust, which in turn added to the value of the stock they were carrying it at, and the books also show a net loss for the year 1929 for the Phoenix office of \$187.15, which is included by that company in their computation of net surplus for the [560] year 1930. According to the books of the Building and Loan Association, they also showed a loss for the Tucson office of the Association for the year 1930 in the amount of \$456.70. They included it in the profit from the Phoenix office in the amount of \$3,363.28 to arrive at their net profit for the year 1930 in the amount of \$2,906.58. Added together, those several figures result in a net profit for the year 1930 of \$2,906.58. That is in accordance with the statement which was mailed here by the Security Building and Loan Association, being Government's Exhibit 160. That statement correctly reflects what the books of the Building and Loan Association alone show as of that date. If you didn't have these other books to inspect also, this financial statement correctly reflects what the books of the Security Building and Loan Association did

(Testimony of C. K. Fierstone.)

show as of that date. I stated that there is carried forward on the Century Investment Trust books an account called "Security Building and Loan Association expenses" amounting to \$21,868.88. The break-down on that figure is: the books of the Century Investment Trust carried an account known as 408, or 108, labelled "Security Building and Loan, Phoenix, Expense." For the twelve months ending October 31st, 1930, the balance in that account was \$16,933.23. Of that amount \$303.79 occurred in November and December, 1929. Now, the same account in November and December, 1930, is reflected \$5,239.44. By taking out the two months of November and December of 1929, and adding the two months of November and December, 1930, would give you a figure for the twelve calendar months of January to December, 1930, amounting to \$21,868.88. I didn't make any allocation of the several items of the salary account for that period. The salaries comprise a substantial part of it. The salaries of D. H. Shreve, G. O. Perkins, R. F. Watt and E. F. Young, and I believe M. Gondie. There is nothing set up there at all for J. H. Shreve or A. C. Shreve. There is nothing in the books to show who the people I have named were working for. I don't know [561] whether they were working for both the Century Investment Trust and the Security Building and Loan Association. But those salaries are charged in that account and added to the cost of the stock of the Security Building and Loan Association,

(Testimony of C. K. Fierstone.)

which was carried on the books of the Century Investment Trust. Whether it is unusual depends upon your method of bookkeeping. Some people add the expense of the company to the cost of stock. It would all depend upon other circumstances, and you can't lay down a general rule on that. Some public utilities companies do it to a certain extent. I have never done any income tax work so I don't know anything about the permissible practice for the Income Tax Bureau and other agencies of the Government. In this item of \$21,868.88 under the item of "Premium," as I figure it, \$1,563.00 for the calendar year of 1930, which includes principally two items, one in September of 1930 for \$1,090.00, and as recorded in the books, "To set up the amount due the Security Building and Loan Association and charge against us on their books for premiums" and an amount in October, 1930, of \$503.00, "To set up an amount charged us by the Security Building and Loan for prizes." That is the only entry in the book. I don't know anything about that. The figure for rent includes principally an item of \$2500.00 in September, 1930. It is simply recorded as Security Building and Loan expenses and allocated to the rent portion of that account on the books of the Century Investment Trust. I am told that the Century Investment Trust and Security Building and Loan Association occupied the same office. In that rent account there is also in December, 1930, a charge of \$3,015.44, which is also recorded as Se-

(Testimony of C. K. Fierstone.)

curity Building and Loan, building and loan expense, and an item of \$15.00 which is simply recorded, Security Building and Loan donation. So far as Government's Exhibit 161 is concerned, this financial statement, the item there of surplus and undivided profits of \$7,719.43 is reflected on the books of the Building and Loan Association. Considering the books of the Security Building [562] and Loan Association alone, that is the correct figure.

JAMES M. SHUMWAY,

recalled as a witness on behalf of the Government, testified:

I stated in my previous testimony that I was at one time manager of the Mesa office of the Security Building and Loan Association.

Mr. Peterson: I will hand you Government's Exhibit 166, being an envelope, and 167 for identification, particularly calling your attention to Government's Exhibit 167, being the letter, and ask you if any letters of that type were mailed from the Mesa office?

Mr. Hardy: We object to that, your Honor. It calls for a conclusion of the witness when he asked if letters of that type were being mailed out of the Mesa office.

The Court: He may answer.

Mr. Hardy: Exception.

(Testimony of James M. Shumway.)

The Witness: Yes, sir.

The witness continuing: Those letters were mailed in the regular course of business from the office of the Security Building and Loan Association. Henry Baker is my uncle.

Mr. Peterson: We offer in evidence at this time, your Honor, Government's Exhibit 166 and 167 for identification, being a letter identified by the witness, Henry Baker, who appeared here on the stand and testified he received this letter through the United States Mail from the Mesa Postoffice.

Mr. Hardy: We object to the receipt of the letter in evidence, your Honor, because there has been no foundation laid for the mailing of the letter from the office of any corporation named in this indictment, [563] and there has been no proof that either of the defendants mailed the letter, or caused it to be mailed, or knew it to be mailed.

The Court: Overruled.

Mr. Hardy: And furthermore, the witness has testified that it was a type of a letter which was mailed.

The Court: It may be received.

Mr. Hardy: Exception.

Government's Exhibits 166 and 167 were received in evidence, and read to the jury by counsel for the Government.

GOVERNMENT'S EXHIBIT 166,

which, abstracted to the issue, is in full substance as follows: Envelope addressed to Mr. Henry Baker,

(Testimony of James M. Shumway.)

Mesa, Arizona, post-marked Mesa, Arizona, July 4, 1931, postage stamp affixed; notation thereon in ink "Henry Baker".

GOVERNMENT'S EXHIBIT 167,

being letter written on Security Building and Loan stationery, 117 N. Central Ave., Phoenix, Arizona, Offices Phoenix, Tucson, addressed to Depositors, signed D. H. Shreve, President, which is in full substance as follows: "We wish you to know that our office in Mesa has been moved, for the summer, from 12 So. Macdonald to the Chamber of Commerce. Mrs. A. J. Hayes, of the Chamber of Commerce, is in charge, taking care of the business while Mr. Shumway is at Prescott for the summer. Those who have not met Mrs. Hayes, we are sure, will be glad to meet her for she will give you our usual courteous service. July first is an ideal time to transfer funds to the Security. If you have funds drawing less than 6%, Mrs. Hayes will be glad to take care of the transfer for you. If you have friends that you think would like the Security plan, we will appreciate it very much if you would [564] suggest to them that they call on us. Remember, always, the Security serves you with an excellent service—safe and paying you six percent. Very truly yours,". Notation on stationery: "Thrift, Independence, Security, 6% ;" also notation in ink, "Henry Baker."

(Testimony of James M. Shumway.)

Cross Examination

The witness continuing: I testified that I was manager of the Mesa office. I was not in the Mesa office at the time that letter was mailed to Henry Baker. Henry Baker is my uncle. I went into the Mesa office in the summer of 1930. I opened the office with the assistance of Dan Shreve, I believe, in the summer of 1930, I don't remember the month. It was when I went to work for the Security Building and Loan Association. I went to work for the Building and Loan Association in the summer of 1930. I went to work for the Security Building and Loan Association on November 29th, 1929. I went to work at the same time I opened the pass book account in the Phoenix office.

MANUEL J. KING,

called as a witness on behalf of the Government, testified:

I have resided in Pima County since 1885. I resided in Pima County in 1930. I have seen before Government's Exhibit 207 for identification. I saw that in the postoffice in Tucson, in my box. It was mailed to me. My signature is on there. They re-appointed a receiver, and he asked me for all the correspondence that I had. I recognize this document. I got that when I was getting dividends from the company.

(Testimony of Manuel J. King.)

Mr. Peterson: We offer Government's Exhibit 207 in evidence at this time, your Honor, being a pamphlet addressed to Manuel J. King from the Board of Directors of the Century Investment Trust.

Mr. Hardy: We object, because it appears to be addressed to Manuel K. King, and for the further [565] reason it is a printed pamphlet. The true name of J. H. Shreve does not appear on here as President of the Century Investment Trust, but it is in stereotype form; it is not the original signature.

Mr. Peterson: Identified by the witness as being a fac-simile signature.

Mr. Hardy: Very well, that does not make it an original signature, and the absence of some proof that J. H. Shreve, the defendant here, knew that this circular was mailed, or caused it to be mailed; the mere fact that a fac-simile signature appears on there, we don't think is sufficient to entitle it to be admitted in evidence. It is hearsay. It is incompetent as to him.

The Court: It may be received.

Mr. Hardy: And another objection; the mere fact that Mr. King took it from the postoffice is no proof it was mailed to him. There has not been any proof it was mailed to him, and in addition, it appears on the face of it that it is not addressed to this witness.

The Court: it may be received.

Mr. Hardy: Exception.

(Testimony of Manuel J. King.)

Government's Exhibit 207 was received in evidence, and read to the jury by counsel for the Government.

GOVERNMENT'S EXHIBIT 207,

which is in full substance as follows: "The Board of Directors of the Century Investment Trust at the Request of J. H. Shreve extends this invitation to Mr. Manuel K. King—The Courtesy of a prompt acknowledgement is requested by using the enclosed envelope and card.—Century Investment Trust, Phoenix, Arizona—Officers and Directors—J. H. Shreve, President, San Diego, [566] Calif. President of a number of financial institutions in Arizona and California. Glen O. Perkins, Phoenix, Arizona, Vice-President and Assistant Secretary, Phoenix, Arizona. J. R. DeLatour, San Diego, Calif., Secretary and Treasurer. J. C. Barnes, Phoenix, Arizona, President, J. C. Barnes Insurance Co. John C. Hobbs, Tucson, Arizona. W. C. Evans, Prescott, Arizona, Cashier, First National Bank, Prescott, Arizona. A. C. Shreve, Phoenix, Arizona, Vice-President and Directing Officer of several financial corporations of Arizona and California. W. H. Perry, Phoenix, Arizona, Capitalist and Citrus Developer. J. G. Cash, San Diego, Calif., Retired Banker. M. Edward Olson, Tucson, Arizona, Manager, Santa Rita Hotel, Tucson, Arizona. H. A. Keeler, Los Angeles, Calif., Capitalist, formerly Executive Vice President, Citizens Trust and Sav-

(Testimony of Manuel J. King.)

ings Bank, Los Angeles, California. E. E. Lane, Phoenix, Arizona, President, Lane-Smith Company, Phoenix, Arizona. M. P. Smith, Phoenix, Arizona, Secretary, Lane-Smith Company, Phoenix, Arizona. The Century Investment Trust was organized under the laws of the state of Arizona to function as an Investment Trust. The name "Investment Trust" is somewhat new in America. It originated in Europe a century ago,—where its operations became very popular and the returns to investors were highly profitable. An Investment Trust Is An Organization Engaged in the Business of Investing Its Own Funds in the Securities of Other Corporations. For many years nearly every bank in the larger cities has had a finance or security company affiliated with such bank to perform all the financial activities not included in the bank's charter, also such financial operations not considered the dignified function of a bank proper. These Finance or Security Companies were, in fact, investment trusts, and I will recite two examples to illustrate the phenomenal earning power of an Investment Trust. In 1908 the first security company of New York was organized. This was the affiliated financial company of the First National Bank of New York. This bank is now paying annual dividends of 100%; of this amount 20% [567] is paid from the bank's earnings and 80% is paid from earnings of the Security Company, an Investment Trust. The Bancitaly Corporation was formed in 1919 as the finance company or invest-

(Testimony of Manuel J. King.)

ment trust of the Bank of Italy. One share of stock of the Bancitaly Corporation at \$100 per share, if it had been purchased in 1919 and if the purchaser had improved his opportunities to purchase rights and receive dividends, this original \$100 investment would have netted the purchaser in eight years \$1,734. Andrew W. Mellon, Secretary of the Treasury of the United States, in his report on income tax returns gives a net profit of 14% on total business handled by companies dealing in money,—such as Investment Trusts, etc., as against 8% for manufacturing and 3% in retail trade. Allow me to recite herewith some of the institutions which the Century Investment Trust owns entirely, others in which it owns control, and others in which it has a stock ownership.—Security Building and Loan Association, Phoenix, Arizona—Security Building and Loan Association, Tucson, Arizona—First National Bank, Prescott, Arizona—Citizens State Bank, Phoenix, Arizona—Arizona Holding Corporation, Phoenix, Arizona—Sunset Building and Loan, San Diego, Calif.—Commonwealth Building Company, San Diego, Calif.—United States National Bank, San Diego, Calif.—First National Bank, Oceanside, Calif.—Southwest Union Securities Corporation, San Diego, Calif. Also stocks and bonds in various corporations including public utilities and industrial corporations, also municipal and government bonds. The purpose of this present stock offering is to provide funds with which to purchase under the pres-

(Testimony of Manuel J. King.)

ent most favorable conditions additional Banking Institutions, building and loan companies, seasoned securities which have a long period of successful record and every form of profitable investment offerings,—to the end that the Century Investment Trust may come to be known as the giant financial institution not only of “Arizona for Arizona” but of the “West for the West”. Please be advised that the Century [568] Investment Trust is not an institution yet to begin, but it is already today a prosperous, healthy, growing corporation. In December, 1929, the Century Investment Trust declared and paid the regular quarterly cash dividend on the preferred stock, and an additional cash dividend on both the preferred and the common stock for the period ending December 31, 1929. We believe the stock of the Century Investment Trust embraces the two features always looked for by careful investors, namely—safety and profit. The dividends already earned and paid by the Century Investment Trust justify a much higher price for its stock than the now selling price; and it is my pleasure to invite you in the name of our Company and our Board of Directors to join with us before the very early advance in the price of the stock of the Century Investment Trust. Yours very sincerely, (facsimile signature) J. H. Shreve, President, Century Investment Trust”.

Thereupon Mr. Flynn, the United States Attorney, announced that the Government rests. [569]

Whereupon, Defendants filed and presented a Motion to Strike Evidence. The Motion to Strike was directed to Government's Exhibits 4 to 10 inclusive, 13 to 27 inclusive, 29 to 34 inclusive, 36, 37, 38, 46, 48, 49, 58, 59, 61 to 75 inclusive, 77 to 89 inclusive, 91 to 96 inclusive, 97, 99, 100, 101, 105, 106 107, 107a to 107p inclusive 107q, 107r, 108 to 111 inclusive, 111a to 111d inclusive, 112 to 116 inclusive, 118 to 123 inclusive, 125 to 135 inclusive, 138 to 147 inclusive, 157 to 182 inclusive, 188, 189, 203 to 207 inclusive.

In addition to the foregoing, said Motion to Strike recited:

And said defendants further move the Court to strike all the testimony of all witnesses in behalf of the Government which was received subsequent to the admission of said books, records and documents in evidence, relating to the contents of the said books, records and documents, and all statements made by such witnesses relating thereto.

Said motion is made upon the ground that no proper foundation was laid for the admission in evidence of the said books, records and documents, and each thereof, hereinbefore referred to, and upon the further ground that the same have not been properly identified by the witnesses testifying in relation thereto; that all of the books referred to in the aforesaid numbered exhibits have not been shown to be in the same condition as they were when they were first taken from the corporations and persons having the custody of same; it having been shown

in evidence that said books, records and documents have been in the hands of several parties, some of whom were called as witnesses by the Government and testified in relation to same but did not identify said books; that it is shown in evidence [570] by the Government's witnesses that said books have been in the hands of persons who have not been called as witnesses on behalf of the Government; that witnesses called by the Government testified, among other things, that the books of the Century Investment Trust and Arizona Holding Corporation are rewritten books; that they do not contain records of original entry, and that recorded in said books are transactions which took place prior to the time of the rewriting of said books by a party who had no knowledge of the facts relating to said transactions, and that the entries made in said books were not made from original entries; that the Government has failed to account for the original books and records of said Century Investment Trust and Arizona Holding Corporation, and original data and evidence from which the said books were written, and has failed to make same available to the defendants; upon the further ground that as to these defendants there was no evidence offered by the Government showing that the defendants or either of them had knowledge of the entries in said books, or that they directed or caused the entries to be made in said books, or assented thereto; upon the further ground that as to these defendants all of said books, records and documents, and each thereof, referred

to herein as Exhibits, are hearsay, incompetent, irrelevant and immaterial; and said motion is based further upon the minutes and records of the Court and all the proceedings heretofore had and taken herein before the Court in the above entitled case.

The foregoing Motion to Strike Evidence was denied by the Court, and Defendants excepted.

Whereupon, and before testimony was given on behalf of the Defendants, Defendants filed a Motion to Direct Verdict. The [571] Motion was directed to each of the remaining eleven counts of the indictment, and the Motion was separately stated as to each of said counts, but each statement was in exact language as follows:

1. That no offense against the laws of the United States is charged in the said count of the said indictment.

2. That the evidence adduced does not tend to prove that the said defendants, or either of them, are guilty in manner and form as charged in the said count in the said indictment.

3. There is not sufficient competent evidence adduced to prove the commission by the said defendants, or either of them, of the alleged offense set forth in the said count of the indictment herein.

4. The evidence adduced is insufficient to prove the commission by the said defendants, or either of them, of the alleged offense charged in the said count of the said indictment.

5. The evidence adduced is insufficient to prove that the said defendants, or either of them, placed or caused to be placed in the United States Post Office within the District of Arizona the envelope, letter, and one page sheet, set forth in the said count of the said indictment.

6. That the matter mailed, as alleged in said count, is wholly insufficient to show or prove that said defendants, or either of them, did, or could, thereby execute the scheme or artifice therein referred to.

7. There is a variance between the charge in the said count of the indictment and the evidence adduced in the proof thereof, in the following respects: [572]

(a) There is no evidence that the said defendants, or either of them, devised or intended to devise any schemes and/or artifice for obtaining money from the persons named in the said count of the said indictment.

(b) The evidence adduced does not tend to prove that the said defendants, or either of them, devised or intended to devise any scheme and/or artifice for obtaining money from the persons named in the indictment by means of the particular false pretenses, and/or representations, and/or promises in the said first count of the said indictment set forth.

(c) The evidence adduced does not prove or tend to prove the alleged offense charged in the

said first count of the indictment; but on the other hand, the said evidence tends only to prove the commission by the said defendants of a large number of other and different offenses than those with which they are charged in the said indictment, none of which are cognizable under the laws of the United States.

The foregoing Motion to Direct Verdict was denied by the Court, and Defendants excepted.

Whereupon

BEN H. DODT,

called as a witness on behalf of the Defendants, testified:

I previously testified in this case that I am now the Receiver for the Security Building and Loan Association, under an appointment of the Superior Court of Maricopa County, Arizona. I was first appointed Receiver of that Association about December 14th, 1931. I served until about January 23rd, 1932, and then the case was taken to the Federal Court and returned to me about March [573] 3rd, 1934, and continuously since that date I have acted as the Receiver of the Security Building and Loan Association. I have the books and records of that Association, except when they were in court. Some of those books are in court at the present time. Some of the books of that Association are now in my possession which are not in court. I brought two books of the Security Building and Loan Association into

(Testimony of Ben H. Dodt.)

court this morning that were subpoenaed. The book entitled "Installment Certificate Ledger No. 1 of the Security Building and Loan Association", is a book or record of the Security Building and Loan Association which is in my possession and which I have brought to court this morning under subpoena. I find in that book an account under the name of James M. Shumway, No. 5156. This page on Defendants' Exhibit A for identification, Certificate No. 5156, shows an account of James M. Shumway with the Security Building and Loan Association.

Thereupon the page of Defendants' Exhibit A for identification, Certificate No. 5156, was received in evidence as Defendants' Exhibit A.

DEFENDANTS' EXHIBIT A

which, abstracted to the issue, is in full substance as follows:

Installment Certificate Ledger, Certificate No. 5156, in account with James M. Shumway, Box 923, Mesa, discloses first credit November 29, 1929, \$50.50, and various credits and withdrawals from that date until October 3, 1931. The last withdrawal, October 3, 1931, \$6.00—last balance same date 71¢.

Thereupon, Defendants' Exhibit A was read to the jury.

The witness continuing: I don't believe I have account No. 115 appearing in the books of the Security Building and Loan Association with respect to the Tucson business which relates to an account

(Testimony of Ben H. Dodt.)

with the Arizona Holding Corporation. That would be [574] in a book similar to this, an individual account. I was asked to bring those two books, and there is one other book in my office, it might possibly be it, that is a copy of it. I looked up the account yesterday and I have a notation that the original ledger page is not in my possession, but it has been in the Court. I think account No. 59, Tucson, of the Century Investment Trust is out of my possession. I have similar records and that was taken out of the trial balance and I found I was out of balance and there were three accounts like the Century Investment Trust, and the Arizona Holding Company, and I put in a ledger sheet in the place of it showing where the original account had been taken. I don't have account No. 59. This starts off with 5100. As I stated a while ago, I have just a copy of 5618, showing what the amount is and the name of the account. A notation that the original ledger sheet of this account was in a file with court papers in the United States Federal Court and marked for identification No. 98. The three sheets marked Certificate No. 1, 1, 115, which you hand me, are sheets from the books or records of the Security Building and Loan Association and they came into my possession as Receiver of that Association.

Thereupon, said Certificates No. 1, 1 and 115 were received in evidence as Defendants' Exhibit B.

(Testimony of Ben H. Dodt.)

DEFENDANTS' EXHIBIT B

which, abstracted to the issue, is in full substance as follows:

Installment Certificate Ledger, in account with Arizona Holding Corporation, Certificate No. 115, showing credit of \$1,000.00 April 6, 1929, and various credits and withdrawals thereafter. Last credit November 9, 1931, \$22.00. Last withdrawal November 9, 1931, \$60.00. Balance November 9, 1931, \$58.45. September 23, 1929, credit of \$32,750.00. Same date, balance \$37,250.00. November 1, 1929, balance \$30,210.00. Same date withdrawal \$30,000.00, balance \$210.00. [575]

Cross Examination

Account No. 5618 which you show me are all records of the Security Building and Loan Association that came into my possession as Receiver. The ledger sheets which are fastened together and marked Certificate No. 59, or Account No. 59, are also records of the Security Building and Loan Association that came into my possession as Receiver. (Documents marked Government's Exhibit 209 for identification.)

Redirect Examination

I have the signature card of James M. Shumway. This card marked No. 5156 came into my possession as Receiver of the Security Building and Loan Association. (The document was marked Defendants' Exhibit C for identification.)

(Testimony of Ben H. Dodt.)

As far as I know, it is the only signature card I have of James M. Shumway. I could not say positively, but I think Check No. 251, dated October 7th, 1929, signed by the Security Building and Loan Association, is a record that came into my possession as Receiver of that Association.

Thereupon, Check No. 251 was received in evidence and read to the jury, without objection, and marked Defendants' Exhibit D.

DEFENDANTS' EXHIBIT D

which, abstracted to the issue, is in full substance as follows:

Check No. 251 of Security Building and Loan Association, in the amount of \$9,000.00, dated at Tucson, Arizona, October 7, 1929, signed by Security Building and Loan Association by John C. Hobbs and A. C. Shreve (Pres. Sec.) drawn on Arizona Southwest Bank, Tucson, and made payable to the order of Arizona Holding Corporation. [576]

VALERIA MUNTER,

called as a witness on behalf of the Defendants, testified:

I live in San Diego, California, and was living there in 1929, 1930 and 1931. I am a public stenographer. During the years 1929, 1930 and 1931 I was employed at the place of business where J. H.

(Testimony of Valeria Munter.)

Shreve and A. C. Shreve had offices. I know Mr. Perkins. I first met him in the month of May, 1929. I saw Mr. Perkins first in our office in San Diego, that was some months previous to the time I met him. I met him in Tucson at a time when I took a vacation. During the years 1929 and 1930, I would say I saw him many times in the office where I worked. He was there quite a number of times and I had conversation with him. I have seen Government's Exhibit 75 before. The first time I saw it was in this court room during this particular trial one day last week. I had never seen it before. I examined it very carefully. There is nothing in that book that I wrote or typed. I was never present at a conversation between Glen O. Perkins and J. H. Shreve regarding this book. I never heard any conversation between them regarding it. I never had any conversation with Mr. Perkins and Mr. Shreve when this book was present. I certainly did not write or rewrite anything that went into this book. I never wrote any minutes at all for the Security Building and Loan Association.

Cross Examination

In 1929, 1930 and 1931 I was employed by the Southwest Union Securities Corporation and Exchange Securities Corporation at their offices, 546 B Street, San Diego, California. There were a number of corporations in that office, the Sunset Building and Loan Association, Pantages, Mills, Shreve &

(Testimony of Valeria Munter.)

Company, Southwest Union Securities Corporation, Exchange Securities Corporation and Century Corporation. There was no individual in charge of the office as a whole, there were different heads of different corporations. J. H. Shreve had an office there. I worked in the office generally, I worked at whatever there was to be done, I don't say [577] that I worked for anyone particularly. I did most of the stenographic work of J. H. Shreve during the time, when he had work to do. I heard the testimony of Mr. Perkins here. I was in the court room at the time he was on the witness stand.

ARCHIE C. SHREVE,

one of the Defendants herein, called as a witness on behalf of the Defendants, testified:

I am the Archie C. Shreve who is named as one of the defendants in the indictment in this case. I reside in San Diego, California, and have resided there since August, 1911, except about two years from April or May of 1917, until March, 1919, when I was in the Army. At that time I was performing military service during the World War. I was born in Butler County, Alabama, on March 1st, 1890. I lived in Butler County until I was sixteen or seventeen years old, and then moved to Covington County, where I resided until I came to California. I went to the University of Alabama

(Testimony of Archie C. Shreve.)

for two years. I graduated with a Law Degree there in 1910. I have been a practicing lawyer since that time up until the present time. I have practiced in San Diego, California. I practiced law in other counties and communities, that is, I tried cases, but I maintained my office in San Diego continuously at that time. I practiced law in Alabama only for a short time; I was just a youngster. I am still a member of the Bar of the State of California, in good standing.

I have observed these books and documents of the Century Investment Trust and the Arizona Holding Corporation and the Security Building and Loan Association which have been introduced in evidence. I have quite extensively made a personal investigation of these books and records of the Century Investment Trust and the Arizona Holding Corporation and the Security Building and Loan Association. I first became familiar with the books and records of the Arizona Holding Corporation in 1929, at Tucson. I only saw those books and knew they were there, that is, books of [578] the Arizona Holding Corporation. At that time I knew Glen O. Perkins and John C. Hobbs. That is the time I became familiar with those books and records of the Arizona Holding Corporation. I never really became what you call familiar with the records. I knew they were the books and records of that corporation and certain of them I had occasion to look at, know about. The circumstances under which I

(Testimony of Archie C. Shreve.)

became acquainted with Glen O. Perkins and John D. Hobbs were that I knew Mr. Perkins prior to 1929. I believe I met Mr. Hobbs early in 1929, or probably the latter part of 1928. I often went to Tucson. The company with which I was employed owned the control of the Santa Rita Hotel in Tucson, and it was part of my duties to go to that place often in connection with the business of that hotel. In 1928, we made arrangements to make extensive improvements in that hotel, and those improvements were made, I believe, in the summer of 1929, at which time we rebuilt the big end of the old part of the building. Altogether, the expenditures amounted to \$115,000.00, and in those visits I became acquainted with Mr. Hobbs and Mr. Perkins, they having rented an office on the ground floor on the street side of the Santa Rita Hotel building. Naturally, in making trips there, I became acquainted with all the tenants, so far as possible, and the permanent tenants on the ground floor. Previous to the time I saw Mr. Perkins and Mr. Hobbs in Tucson, I had not had any business transactions with any of them. I had occasion to know Mr. Perkins in San Diego in connection with some lawsuit I was interested in; I don't remember what, but he came into the lawsuit and I became acquainted with Mr. Perkins in my practice of law in San Diego. That lawsuit did not have any connection with the business of the Arizona Holding Corporation, the Century Investment Trust or the Security Building and Loan Association. That was probably before

(Testimony of Archie C. Shreve.)

1928. I do not know who the litigation was between, whether it was a civil suit or a criminal case. I just know I met Mr. Perkins. At the time I saw or met Mr. Perkins or [579] Mr. Hobbs in Tucson, my business was in connection with the Southwest Union Securities Corporation, by which I was employed, and the Overland Hotel and Investment Company; a part of the time it might have been by the Santa Rita Hotel Company. The Overland Hotel and Investment Company had a relation to the Santa Rita Hotel property; it owned the greater part of the stock of the Santa Rita Hotel Company, and had a long term lease; that is, the Overland Hotel and Investment Company had a long term lease covering the Santa Rita Hotel property, and operated the Santa Rita Hotel from about 1928 and thereafter up until a couple or three years ago, and in the improvements of the Santa Rita Hotel, the Overland Hotel and Investment Company caused those improvements to be made at its expense, as the operating company, and too, because the long term lease had with it an option to buy the property. During that time Mr. Perkins and Mr. Hobbs had rented a business space in that hotel. When I saw Mr. Perkins and Mr. Hobbs they were the people I knew in connection with it. I believe it was the Arizona Holding Corporation. There might have been other people interested in it, Mr. James and some others, I never knew. The Tucson office of the Arizona Holding Corporation was along the street side of that hotel. I do not think I had

(Testimony of Archie C. Shreve.)

anything to do with the renting of that office space to either Perkins or Hobbs, or the Arizona Holding Corporation. Mr. Olson was the manager of the hotel and had charge of rentals. Of course, I might have been consulted about it, as to whether or not the tenant would be suitable or satisfactory; usually if he was going to make a lease or anything, he would submit it sometimes to me and sometimes to whoever happened to be present. Mr. Olson was manager of the hotel and had charge of those rentals. On these trips to Tucson about which I have spoken, Mr. Perkins and Mr. Hobbs, on several occasions, spoke to me with regard to their venture or business enterprise. In my visits at the hotel, Mr. Perkins and Mr. Hobbs would see me, come into the hotel, stop and chat with them as I would anybody else, [580] Dr. Hoffman in Tucson, and other tenants passing along. Probably in February, 1929, they undertook to interest me in the purchase of stock in the Arizona Holding Corporation, and told me of their plan to organize a building and loan association, and explained that they were having some difficulty, or were going to sell to raise necessary capital which was required to open a building and loan association. I did not purchase any stock at that time. They talked to me two or three times about it, and I told Mr. Hobbs we were not interested in buying any stock in the Building and Loan Association or the Holding Company such as they had. They approached me on several different oc-

(Testimony of Archie C. Shreve.)

casions. At the time Mr. Perkins and Mr. Hobbs first approached me, I was not acquainted with Mr. L. C. James; I was not acquainted with Dr. Bascomb Morris, and I do not believe I was acquainted with Dr. C. A. Thomas. I was not acquainted with the law firm of Matthews & Bilby. In the latter part of February, 1929, in Tucson, Mr. Hobbs and Mr. Perkins said they had raised a certain amount of money, I believe thirty odd thousand dollars, that it would be necessary for them to have \$50,000 before they could get a charter for the Building and Loan Association to do business. They explained to me that they had the promise of money from certain people in Tucson, that that money had been borrowed from some bank to be used by the Arizona Holding Corporation, but that the bank would not release the money until certain notes were paid. I believe they told me that the money, about \$15,000, was in the form of cashier's checks, held as security for the payment of those notes, and didn't do them any good. In other words, they could not use the money. They had to have the money released so they could deposit it with the State Treasurer. Mr. Perkins stated that they had, I believe, Mr. James, Dr. Morris and Dr. Thomas. I didn't know them at that time. They had raised some question about going ahead with the business, that they had decided they would not proceed; they didn't want to be connected with the Building and Loan Association. [581] I told Mr. Perkins and Mr. Hobbs that I would not be interested in making the investment, that I might

(Testimony of Archie C. Shreve.)

take it up with my associates in San Diego and see if there was any likelihood of an investment, and in due course of time it was brought to the attention of Mr. Cash and my brother, J. H. Shreve, who is on trial here. I told Mr. Perkins that I would discuss the matter with him. On my return to San Diego, I did, and immediately, in the course of two or three days, telegrams began to come, and telephone conversations with Tucson, wanting to know if it was not possible for us to become interested and put up the necessary money to get a charter for the Building and Loan Association. I believe I made another trip to Tucson and told Mr. Perkins and Mr. Hobbs that it was doubtful if we could be interested to the point of getting the necessary money. I made this trip to Tucson the latter part of February, 1929. I asked Mr. Perkins what the trouble was and he said Mr. James or Dr. Morris or some of them objected to proceeding with the organization of the Building and Loan Association unless they had someone to take charge of it, manage it and operate it, other than himself. He at that time said they knew of his difficulties in San Diego, California, with the San Diego High School, that they would not permit him to become the head of the Building and Loan Association; that it would be, in his opinion, impossible to get a charter for the Building and Loan Association. Mr. Perkins told me this. I told him I didn't think it was possible for us to be interested, but if he wanted he could come to San Diego and talk to

(Testimony of Archie C. Shreve.)

Mr. Cash and my brother, J. H. Shreve. He came over and had a conference. That was late in February or the first of March, 1929, and I believe J. H. Shreve, Mr. Cash, Mr. E. R. Kelly, who was one of the parties interested, came to Tucson, with the idea of going into the matter and seeing if we wanted to help get the charter for the Building and Loan Association. I don't believe I came to Tucson on that trip with those gentlemen. E. R. Kelly resided in San Diego and [582] was a man with a great deal of means; he was in the Western States Finance Corporation. I believe he came to Tucson with J. H. Shreve and J. G. Cash, and there might have been someone else, I would not be sure. The crowd that went over made an investment of approximately \$15,000 and the Building and Loan Association was organized. In the conference before they came from San Diego to Tucson, Mr. Cash was discussed as likely the man to manage it, open it and control it, after the investment was made. Neither J. H. Shreve nor I sent either Mr. Perkins or Mr. Hobbs over here for the purpose of organizing the Building and Loan Association or the Arizona Holding Corporation. The Arizona Holding Corporation had been organized, as I probably learned at that time, almost a year prior to our association with it at all. This proposition came to me without any knowledge that the Arizona Holding Corporation already had been organized, except for the fact that they had the Arizona Holding Corporation to organize the

(Testimony of Archie C. Shreve.)

Building and Loan Association. In other words, they explained to us that the purpose of the Arizona Holding Corporation was to raise money for the purpose of organizing the Building and Loan Association. The company was organized without my knowledge a long time before either one had talked to me. J. G. Cash was the person who testified in this case. He has been a resident of San Diego, California, for some time, and was in the banking business there, and in the Imperial Valley, for many years. My brother J. H. Shreve and I have known him for fifteen years, more or less. We have done business with him. We knew his qualifications for the operation of a business like a Building and Loan Association. He has been Cashier of banks, and I believe was connected with the United States National Bank in San Diego, and also the Southern Trust and Commerce Bank. It is my understanding that when my brother J. H. Shreve, Mr. Cash and Mr. Kelly came over here, some arrangement was made between them, Perkins and Hobbs, with respect to an investment in the Arizona Holding Corporation. There was about \$35,000 available in [583] Tucson that Mr. Perkins and Mr. Hobbs had in the Arizona Holding Corporation. At the time they came over they put up fifteen or twenty thousand dollars additional money to go with what was already in the Arizona Holding Corporation, which made the necessary \$50,000 for the deposit with the State Treasurer, so that the Building and Loan As-

(Testimony of Archie C. Shreve.)

sociation could qualify to do business in the State of Arizona, as I understand the law required a deposit of that amount of money before the Association could do business. With regard to the organization of the Security Building and Loan Association, I have looked at the records and the articles of incorporation and the by-laws. I know that such company was organized. That organization was the completion of plans which Glen Perkins and John Hobbs had. Mr. Perkins and Mr. Hobbs already had printed, or at least a portion of the pass books, certificates, and so forth, for the Building and Loan Association, before we became interested in it. When I say "we" I mean myself, Mr. Cash, my brother J. H. Shreve, and Mr. Kelly, I believe, and one or two other people from San Diego. Mr. Cusick who testified was attorney for that Association and an organizer, or did legal work in connection with this organization; that was my understanding. At the time the Building and Loan Association was organized Mr. Cash was elected Secretary and managing officer of it, and had charge of the opening of the books and opening of the company for the transaction of business. He was in complete charge of it and Mr. Hobbs was employed as an assistant to Mr. Cash, primarily to learn the operation of the business. There was some discussion of Mr. Perkins or Mr. Hobbs taking the job, and it was finally agreed that Mr. Hobbs would remain in the office on a salary, that Mr. Perkins would work outside selling

(Testimony of Archie C. Shreve.)

stock and soliciting business of the Building and Loan Association on commission. Mr. Hobbs and Mr. Perkins both insisted on being put on a salary but Mr. Cash would not agree to it, and neither would the Board of Directors. After the Security Building and Loan Association was organized it [584] opened offices in the Santa Rita Hotel, I believe, in March, 1929. The offices of the Arizona Holding Corporation and the Security Building and Loan Association were together in the Santa Rita Hotel. At the time these offices were opened, Mr. Cash was placed in charge of it, and the other employees at the time the office was opened were Mr. Hobbs and Mr. Perkins. Those three became the original employees of that office. I know Mrs. Fricke who testified here. I first became acquainted with her in Tucson. That was almost a year after the Association was opened for business. I think Mrs. Fricke was employed the latter part of 1928 or early in 1929. At the time she was employed John C. Hobbs was in charge of the office. I had no official connection with the office at that time, except that I was a director and probably an officer. On one occasion Mr. Hobbs asked if he could have some help, and discussed it with Mr. Perkins and myself. I was in Phoenix part of the time and a part of the time in Tucson. We told him that he may find a suitable person to assist him. On one of my trips to Tucson I met Mrs. Fricke in the office. I think she was already employed, but I would not say I

(Testimony of Archie C. Shreve.)

employed her myself. I might have been supposed to have employed her but she was working there when I came in. Mr. Hobbs asked me what I thought of her and I said if it was agreeable to him it was agreeable to me. Mr. Perkins said she was agreeable to him. The Phoenix office had been open for some little time prior to the time Mrs. Fricke became employed in Tucson with the Security Building and Loan Association. With respect to the opening of the Phoenix office of the Security Building and Loan Association, in the summer of 1929, Mr. Perkins made a trip or two to San Diego and stated to myself and Mr. Kelly and my brother J. H. Shreve that they were not doing so well in Tucson, business was very slow, and that he wanted to open an office in Phoenix. He had many contacts here and believed that if they had an office in Phoenix he could make a greater success of the business and not go along with such a small [585] volume of business. After considerable discussion back and forth, took the matter up with Mr. Cash, Mr. Perkins came to Phoenix and said he would look the situation over here and finally found a room that he thought was suitable for opening the office of the Security Building and Loan Association. He came back to San Diego during the fall of 1929 and told us of the situation and what he wanted to do. He wanted to open an office here, and I believe I came here, or my brother J. H. Shreve, and *look* the office over and went over the situation. He was very enthusiastic

(Testimony of Archie C. Shreve.)

of the possibilities of a Building and Loan Association in Phoenix, and the net result was that the office was rented in the Adams Hotel and arrangements were made to open an office here. Mr. Perkins came to San Diego voluntarily to discuss the matter of the opening of the Phoenix office, came over and told us what he and Mr. Cash discussed, and wanted to know what we thought. I told him it was up to him and Mr. Cash, more or less, if they wanted to open an office here, get Mr. Cash's and Mr. Hobbs' approval, probably it might be all right. Mr. Hobbs and Mr. Cash approved of the opening of an office of the Security Building and Loan Association in Phoenix. The office was opened, I believe, in November, 1929, in the Adams Hotel Building, in the office which Mr. Perkins had arranged for through the Commercial National Bank. It was a small room adjoining the Commercial National Bank. Mr. Perkins came from Tucson here and remained in charge of the office in Phoenix from there on. At about that time, and before the office was opened in Phoenix, Mr. Perkins stated that the Arizona Holding Corporation was not doing so well and he didn't seem to be satisfied with the way it was organized, and wanted to organize a new company to succeed the Arizona Holding Corporation. In the move from Tucson to Phoenix it was agreed that the Arizona Holding Corporation be reorganized and the Century Investment Trust would become the holding company for the Building and Loan Association,

(Testimony of Archie C. Shreve.)

and through Mr. Perkins and myself and others the Century [586] Investment Trust was organized. The Century Investment Trust was organized in 1929. Mr. Perkins asked me to organize it. I handled all the legal details of that company, at his request. It was the purpose of the organization of the Century Investment Trust to succeed the Arizona Holding Corporation and acquire its holdings, particularly the Building and Loan Association. He wanted to go into a general investment business, stocks, bonds and securities. First of all the Arizona Holding Corporation owned the stock of the Security Building and Loan Association. That was under the original set-up, and after the Century Investment Trust was organized it acquired the assets of the Arizona Holding Corporation. I became actively associated with these companies which I have identified for a period of time. I came here to assist in the organization of the Century Investment Trust, and at about the time it was being organized and the office was being opened, the great crash came along and upset almost everybody's plans, and that was right in the middle of the organization of the Century Investment Trust. I am not sure of the date but it happened within a week or two or three. The Century Investment Trust was organized at about the time the Phoenix office of the Security Building and Loan Association was opened. It was organized upon the suggestion of Mr. Perkins. At that time Mr. Perkins was here in the office of the Security

(Testimony of Archie C. Shreve.)

Building and Loan Association. He came here and made all arrangements and had charge of the opening of the office. I was here with him and assisted in the opening of the Phoenix office. There might have been two or three other people present on the occasion when we opened the office. Mrs. Harrington, who testified here, was the bookkeeper. That left Mr. Hobbs, Mr. Cash and Mrs. Fricke in the Tucson office. About the time this office was opened in Phoenix in 1929, Mr. Cash wanted to be relieved of his duties in Tucson. Mr. Cash resigned as active head of the Security Building and Loan Association in 1929, to the best of my recollection. Incidentally, Mrs. Fricke [587] wasn't with the Association at that time and did not become associated with it till three or four months after Mr. Cash resigned. At the time Mr. Cash resigned he had a conversation with me with respect to Mr. Hobbs. In discussing the office in Phoenix and his resignation as the active head of the office in Tucson, Mr. Cash stated that in his opinion Mr. Hobbs was competent to handle the affairs of the Tucson office. That he believed Mr. Perkins would be able to continue to work on the outside or at any other place that his services might be desired. Mr. Cash also stated that if Mr. Hobbs needed any help from him, he would return to Tucson from time to time to render any advice or give any advice or assistance that he could. He remained as a director and officer of the Association for some time thereafter. The salaries paid to Mr.

(Testimony of Archie C. Shreve.)

Cash, Mr. Hobbs and Mr. Perkins were discussed at or about the time the Association began business. Mr. Cash fixed the pay of everyone, I believe, except himself. The Board of Directors fixed his compensation. Mr. Hobbs, I believe, was paid a salary of \$150.00 or \$200.00 a month, and that salary was to be divided between Mr. Perkins and Mr. Hobbs. Mr. Hobbs was to remain in the Tucson office and work inside the office, and Mr. Perkins was to work outside and receive a commission on any business that he did for the company, but no salary until some time after he came to Phoenix. I never drew any salary from any of them, not a penny. J. H. Shreve never drew any salary at any time; neither J. H. Shreve nor myself spent a great deal of time with either of these companies. I spent about three months—a good portion of the time here in Phoenix was the only time that I ever devoted to either of the companies; was here for two or three days visiting in Tucson in connection with the Santa Rita Hotel, and then I would go back to San Diego. I was never actively and permanently connected with any of these companies. I testified that the Phoenix office of the Security Building and Loan Association was opened in November, 1929. The Century Investment Trust was [588] organized about the same time. The two were opened in Phoenix at virtually the same time. Plans for opening the Building and Loan Association, I don't know what the date was, it was some time in November, but the Century Investment Trust was

(Testimony of Archie C. Shreve.)

put in operation maybe a few days before. The Century Investment Trust and Security Building and Loan Association occupied the same office in Phoenix, in the Adams Hotel. The Century Investment Trust was organized as a holding company and dealt in stocks and bonds and general investments. The permits provided for the sale of certain of this stock for cash, and exchange of certain of its stock for stocks and bonds and other securities. The plan, according to the permit, was to exchange its stock for other holdings, such as bonds, real estate, or whatever it might make a deal on. Part of this stock was to be sold only for cash. In connection with the legal details, I organized the Century Investment Trust, in company with Mr. Perkins, and handled the application for a permit before the Corporation Commission, and did the legal work in organizing the company, getting it ready for engaging in business. The Arizona Corporation Commission issued the permits, one for sale of stock and one for exchange of stock. The Century Investment Trust was to become the owner of the capital stock of the Security Building and Loan Association. Mr. Morris was interested originally in the organization of the Century Investment Trust, that is, he assisted in the organization and after it got organized and the depression came along, he never went through with his program to join in the operation of the Century Investment Trust. Mr. Norris, I believe, was President of the Commercial National Bank in Phoenix at

(Testimony of Archie C. Shreve.)

that time. Government's Exhibit 43 is one of the permits issued by the Arizona Corporation Commission to the Century Investment Trust, and this other one, (Government's Exhibit 44), is the one authorizing and exchange of stock for stocks, bonds and personal property and real estate.

Mr. Hardy: Q. Now, Mr. Shreve, referring to [589] Government's Exhibit in evidence No. 44, which is a permit issued by the Arizona Corporation Commission to the Century Investment Trust, subdivision A on that permit provides as follows: "To exchange 100,000 shares of its Series A preferred stock without par value and 450,000 shares of its common stock without par value for such stocks, bonds, securities, personal property and real estate as in the judgment of the Board of Directors of the corporation is for the best interests of the Company, and as set forth in the application for this permit." Now, in accordance with that permission from the Arizona Corporation Commission which I have just read you, can you now testify as to what the Board of Directors did with respect to the exchange of the 100,000 shares of the Series A stock of the Century Investment Trust?

A. I could if I had the books.

Q. Of the Century Investment Trust?

A. Yes.

Q. Well, now, will you look at the books, Mr. Shreve, and tell us what was done, if you can, under that permit?

(Testimony of Archie C. Shreve.)

A. I need——

Q. Well, when?

A. I don't know whether I can tell you or not. I don't know much about books.

Q. Sir?

A. If I could get the right accounts, I could tell you.

The witness continuing: I don't know whether or not there was an exchange of 100,000 Series A preferred stock in the [590] Century Investment Trust. There might have been a portion of it exchanged. I don't know whether they exchanged 450,000 shares of its common stock for other properties or not. Some of it was exchanged, in accordance with that permit. Certain stock was issued, I don't know whether for cash or exchange in connection with the Arizona Holding Corporation, and that stock was exchanged for stock of the Arizona Holding Corporation. In other words, the Century Investment Trust's stock was exchanged for stock in the Arizona Holding Corporation which previously had been sold by Mr. Perkins and Mr. Hobbs. The stock of the Security Building and Loan Association was acquired by the Century Investment Trust from the Arizona Holding Corporation. As to the bookkeeping entries and the method it went through, I can't tell from the books in evidence as to what happened. The Arizona Holding Corporation did own stock of the Security Building and Loan Association prior to the time the Century Investment Trust was organized. Then the Century Investment Trust became

(Testimony of Archie C. Shreve.)

the owner of that stock. There might have been qualifying shares of the Security Building and Loan Association held outside of the Arizona Holding Corporation for the directors. Exhibit 44, being that permit from the Arizona Corporation Commission, Paragraph C provides: "This permit is granted upon the same conditions as imposed in Permit Decision No. 5041." Government's Exhibit 43, which you hand me, is the permit or decision No. 5041. There was a small portion of stock sold and issued in accordance with that permit, Government's Exhibit 43, subdivision A of which provides: "To issue and sell 50,000 shares of its no par value preferred stock, and 50,000 shares of its no par value common stock in units of one share of preferred and one share of common stock at not less than \$25.00 per unit, and to net the Company not less than \$20.00 per unit, as set forth in the application for this permit." The provision of the permit that the stock shall be sold at not less than \$25.00 per unit, to net the Company not less than \$20.00 per unit, is the [591] commission allowed for the sale of the stock, and the salesman who sold the stock had a license with the Corporation Commission which would entitle them to that compensation for selling stock. There were several employed by the Century Investment Trust to sell stock as authorized by this permit. Mr. Ames, Mr. George, and Mr. Perkins, I believe, had a license and several others procured a license to sell that

(Testimony of Archie C. Shreve.)

stock. I never saw before Government's Exhibit 6, which is permit No. 6060 issued by the Arizona Corporation Commission on June 9th, 1928. I never saw this permit before, except in evidence here or in the former case. I saw Government's Exhibit 69 in the former trial of this case. This is a book of the Arizona Holding Corporation. The first entry on that books I see here is November 5th, 1929, the top of the page which is November and December, 1929. With reference to this permit, being Government's Exhibit 6, dated June 9th, 1928, that opening entry is approximately a year and a half thereafter. All the opening entries in this book appear to be from November, 1929, or after that date, as far as I can see here. There were some transactions by the Arizona Holding Corporation before November, 1929. There was a transaction on September 23rd, 1929, with the Overland Hotel and Investment Company and the Arizona Holding Corporation, before the date of the first entry in that book which I hold in my hand. This book appears to be in the handwriting of Mr. Watt and those entries were made and dated long prior to the time he ever had anything to do with that company. I am speaking of R. F. Watt who testified as a witness for the Government in this case. I know now when he became associated with the Arizona Holding Corporation, from my conversation with him, Mr. Perkins and my brother Daniel H. Shreve. He became associated with the Arizona Holding Cor-

(Testimony of Archie C. Shreve.)

poration in June or July, 1930, six or eight months subsequent to the date of the first entry in that book. I am positive the transactions happened with the Arizona Holding Corporation prior to the first date recorded in that book. I know [592] of a transaction that my brother J. H. Shreve and I handled in respect to the purchase of stock in the Arizona Holding Corporation. I believe we purchased stock of the Arizona Holding Corporation in March of 1929. That is in reference to the business dealings that we had with Mr. Hobbs and Mr. Perkins. That was in reference to the original transaction. I examined these books quite extensively, and I never found that transaction in this book. As far as I found, all dates in that book are subsequent to that transaction, and I have looked through pretty carefully. Neither J. H. Shreve nor I ever made any entries in that book. I would not know under whose supervision that book was kept. I know it was not under my supervision or the supervision of my brother J. H. Shreve. But I do recognize the handwriting in this book as Mr. R. F. Watt's. I don't see anybody else's handwriting here. There may be but I haven't found any. As far as I can tell, it is all in the handwriting of Mr. R. F. Watt. Government's Exhibit 70 is marked "Stockholders Ledger", but it is not a stockholders ledger. Stocks, bonds, notes receivable, accounts receivable, notes payable and accounts payable. I don't see anything in the book to identify

(Testimony of Archie C. Shreve.)

it. The memorandum on the fly leaf says "Arizona Holding Corporation". Without looking at each page, I would say all the handwriting in Government's Exhibit 70 is Mr. Watt's, with probably a few exceptions. That is an entry (indicating the book) made out in his handwriting. I can't tell what it is. It is James Gimmell. I recognize many entries in that book which are in the handwriting of R. F. Watt. Neither J. H. Shreve nor I made any entries in this book, nor did we authorize anyone else to make any entries in this book. I did not authorize R. F. Watt or anyone to make any entries in this book or cause any entries to be made. After the Century Investment Trust and the Securities Building and Loan Association opened its offices in Phoenix, I remained with those companies partially until March, 1930. I was in Phoenix part of the time and Tucson part of the time in [593] connection with the Santa Rita Hotel, and in San Diego part of the time in connection with other business. After the latter part of February or early part of March, 1930. I had no connection with those companies except I might have been carried on as an officer of one or more of them for a short time. At or about the time the Century Investment Company and the Security Building and Loan Association opened offices in Phoenix, I had a conversation with regard to the future business of those corporations at the office of the Security Building and Loan Association and the Century Investment

(Testimony of Archie C. Shreve.)

Trust, in the Adams Hotel Building, here in Phoenix. My brother J. H. Shreve, Glen O. Perkins and myself were present at that conversation. To the best of my recollection, it was said at that meeting that the companies had opened for business, including the Building and Loan Association at Phoenix, and things were not going so well. It was soon after the so-called great crash in 1929 and my brother J. H. Shreve came over to Phoenix from San Diego and stated that——

Mr. Flynn: Just a minute. At this time, your Honor, we object to the conversation between the defendants, for the reason that it is inadmissible. It is a self-serving conversation between the defendants in this case.

The Court: Yes, purely self-serving.

The Court: If you want to get in a statement in the record that Perkins made, that is different Conversations between these people are purely self-serving.

Mr. Hardy: Not as between persons who had a conversation at which the witness Perkins was present your Honor.

The Court: I say, if you want to get into the record Perkins' testimony——

Mr. Hardy: Associate him with the companies. [594] all right.

Q. What was said to Mr. Perkins at that time?

Mr. Flynn: Object to that, no foundation is laid for it; no impeaching question was asked Mr. Per-

(Testimony of Archie C. Shreve.)

kins about any such conversation when he was on the stand.

The Court: I don't recall.

Mr. Hardy: Certainly, Mr. Perkins testified about a conversation which he had with both Archie Shreve and J. H. Shreve.

The Court: All right, you have your conversation.

Mr. Hardy: For the purpose of the record, may we have an exception, and I will try to ask another question.

The Court: Yes, indeed.

Mr. Hardy: Q. Now, you have stated that about this time there was a conference between Glen O. Perkins, J. H. Shreve and yourself?

A. There was.

Q. At Phoenix, Arizona?

A. Yes, sir.

Q. Was this conversation directed to Mr. Perkins, or did it, in any way, involve him with respect to a connection with either the Century Investment Trust or the Security Building and Loan Association?

A. It did, and about the conduct of this business.

Q. Now, state it.

Mr. Flynn: Object to it on the ground it is self-serving.

The Court: You are right back where you [595] started from.

Mr. Hardy: Your Honor ruled that the question may not be answered?

(Testimony of Archie C. Shreve.)

The Court: I ruled that it is purely self-serving.

Mr. Hardy: Exception.

(The witness continuing) Mr. Perkins at that time had a conversation with me, or J. H. Shreve in my presence.

Q. What was that conversation?

Mr. Flynn: We object on the ground there is no foundation laid for any impeaching statement as to Mr. Perkins' statement, no impeaching question having been asked him at the time he was on the stand, and it is self-serving.

Mr. Hardy: It is not laid for the purpose of impeachment. The question was asked and predicated in regard to future business of the Century investment Trust and the Arizona Holding Corporation. It is not asked for the purpose of impeaching—

Mr. Flynn: Well, it would be immaterial.

The Court: Well, it would only be self-serving.

Mr. Hardy: The conversation Mr. Perkins had with either of these defendants?

The Court: Well, if you want to impeach the witness, you have to lay the foundation for it always.

Mr. Hardy: I understand that.

The Court: Well, I am not going to argue with you.

Mr. Hardy: Exception.

The witness continuing: I had a conversation with Mr. Perkins in regard to the exchange of stock of

(Testimony of Archie C. Shreve.)

the Century Investment Trust for certain stocks and securities in San Diego, [596] California.

Q. To the best of your recollection what was said between you and him, you and Mr. Perkins, with regard to these exchanges of stock?

Mr. Flynn: We object to that on the ground it is self-serving, not impeaching, and no foundation being laid for an impeaching question.

The Court: Sustained.

Mr. Hardy: Exception.

Mr. Hardy: Did Mr. Perkins at or about the time the offices of the Century Investment Trust and the Security Building and Loan Association were opened, have any conversation with you with regard to the payment of a dividend?

A. He did.

Mr. Flynn: The same objection—we withdraw the objection on that. He stated there was a conversation.

Mr. Hardy: Q. What was that conversation?

Mr. Flynn: We object to that on the ground it is self-serving and no foundation being laid for an impeaching question.

The Court: Sustained.

Mr. Hardy: Exception.

The witness continuing: At about the time the office of the Century Investment Trust and Security Building and Loan Association was opened in Phoenix, I took part with regard to the payment of a dividend by the Century Investment Trust.

(Testimony of Archie C. Shreve.)

Q. State what you did in that connection.

A. There was certain stock in the hands of people of the Century Investment Trust which had been [597] exchanged for stock of the Arizona Holding Corporation. Mr. Perkins had stated that he had promised to pay—

Mr. Flynn: We object to any statement made by Mr. Perkins, first, on the ground that no proper foundation has been laid, and second, no place has been fixed, and, third, it is immaterial.

Mr. Hardy: The time and place has been fixed, your Honor, and it can't be immaterial, and it is not self-serving because the record has shown Mr. Perkins was an officer and a director, and participated in the active management of these corporations. There has been testimony given here by the auditors for the Government, or at least one of the auditors of the Government, with regard to the dividend about which this witness has been asked, and we think that as a defendant in this action he is not only entitled to explain that transaction with respect to that dividend, but any transactions or conversations he had with Mr. Perkins in regard thereto.

The Court: His conversation is self-serving, can't you understand that?

Mr. Hardy: Yes, your Honor, I do understand the rule, I think, with regard to self-serving declarations.

The Court: I don't know whether you do or not.

Mr. Hardy: But they can't be self-serving now

(Testimony of Archie C. Shreve.)

after the Government has introduced evidence with respect to these other transactions which we are asking that the witness be permitted to explain.

The Witness: May I make a statement?

The Court: No. Well, fix the time of this [598] statement, particularly with reference to the dividend.

Mr. Hardy: Q. What was that time?

The Witness: December, 1929.

Q. December, 1929—

The Court: Go ahead and state what Perkins said.

The Witness: He stated he had promised, if possible, to pay a dividend to stockholders on or about January 1st, and that he believed there was sufficient funds available to pay a dividend. Included in those funds was \$2750.00 earned from a commission on a loan made by the New York Life Insurance Company to Harold Steinfield at Tucson in the amount of \$110,000.00. The commission on that loan was \$5500.00, half of which went to the Fisher-Ingraham Company of San Diego, and half of it was to be paid to the Arizona Holding Corporation or the Century Investment Trust. Those funds, along with others which had been earned, Mr. Perkins stated that the Company could pay a dividend. He went to Tucson during the month of December, 1929, and returned and stated that the funds; that is, \$2750.00, was available in Tucson from that loan, or would be on or about the 15th of December, and soon after that Mr. Perkins went

(Testimony of Archie C. Shreve.)

to Kansas, returned here the latter part of 1929, or December, 1929, or early in January, and the dividend, under his instructions, had been ordered, and I asked him where——

Mr. Flynn: Just a minute, we move that that statement “under his instructions” be stricken and the jury be directed to disregard it on the ground that it is a conclusion and not a statement of fact.

The Court: All right, it may be stricken. [599]

The witness continuing: After Mr. Perkins returned from Kansas where he spent the holidays, I asked him where he had deposited the \$2750.00. He said he had used it. I asked him by what reason or right he had to use that \$2750.00. He said he took this trip and needed the money and used it on his trip, and we had quite a row, and the net result was that he called J. H. Shreve at San Diego and asked him to come over here. I was present at the telephone conversation; told him we were having considerable trouble and he had better come over. J. H. Shreve came over. Mr. Perkins told him about the \$2750.00, and after considerable discussion of the matter, the money was put up or provided for the Century Investment Trust. I think Mr. Perkins borrowed the money from J. H. Shreve to replace the \$2750.00 which appears in the records of the Century Investment Trust in this case. The \$2750.00 shows as having been received from the proceeds of that commission on that loan. Mr. Per-

(Testimony of Archie C. Shreve.)

kins stated to my brother and myself that on or about the 17th day of December he had gone to Tucson and received the check for \$5500.00, payable to the Fisher-Ingraham Company. He got the cashier of the Consolidated National Bank to phone the bookkeeper of the Fisher-Ingraham Company in San Diego for permission to endorse their name on that check and have half of it made payable to Fisher-Ingraham Company and half of it to himself. Half of that check, which was \$2750.00, was received by Mr. Perkins. That belonged to the Century Investment Trust. There were several other loans made in a like manner by the New York Life Insurance Company, commissions which were divided the same to the Fisher-Ingraham Company and which, of course, were paid to the Century Investment Trust, the other half. The \$2750.00 was an earned income which went towards the payment of that Dividend on January, 1930. There was a number of commissions earned from loans of the New York Life Insurance Company at that time.

The Witness: In connection with that transaction, [600] I informed my brother and Mr. Perkins that I would not remain with the Company any longer——

Mr. Flynn: Just a minute, we object to that on the ground that it is a self-serving statement of a conversation.

The Court: Yes, what you told anybody would not be——

Mr. Hardy: Exception.

(Testimony of Archie C. Shreve.)

The witness continuing: I severed my connection with the Security Building and Loan Association and the Century Investment Trust about March 1st, 1930, because of the trouble I had had over the \$2750.00, and the fact that my time and attention was needed for other business affairs.

Q. Was there any discussion had between Mr. Perkins and yourself at that time about the return of any investment which you may have had in the Century Investment Trust or the Security Building and Loan Association?

Mr. Flynn: We object to any conversation between the defendant and Mr. Perkins, on the ground it is self-serving, no foundation being laid for an impeaching question.

The Court: Sustained.

Mr. Hardy: Exception.

The witness continuing: About that time I severed my connection with these companies. That was the latter part of February or early part of March, 1930, that I gave my resignation as an officer and director of the Building and Loan Association and also the Century Investment Trust, and I believe the Arizona Holding Corporation. I was supplanted by Daniel H. Shreve in connection with the Century Investment Trust and Security Building [601] and Loan Association. Daniel H. Shreve came to Phoenix on two or three occasions and discussed the matter with myself, Mr. Perkins, and on one occasion I believe J. H. Shreve, and on or about March first

(Testimony of Archie C. Shreve.)

he acquired whatever interest J. H. Shreve and myself had in the Security Building and Loan Association, the Century Investment Trust and the Arizona Holding Corporation. That was the latter part of February or early part of March, 1930. At that time the resignation of J. H. Shreve and myself was delivered, with an agreement that it could be used immediately or within a short time thereafter, but to take their time to get somebody to take our place and reorganize to suit themselves. Mr. Perkins had a conversation with Dan Shreve and J. H. Shreve and myself in San Diego in connection with this matter in February, 1930.

Q. And how did that arise and what was done in that conference?

Mr. Flynn: We object to that on the ground, first, the question is a double question, and, second, as far as the last part is concerned, it is immaterial, and calling for a conversation that would be self-serving.

Q. Well, what was done with respect to your connection with these companies at that conference?

A. Daniel H. Shreve, and when I refer to Dan, I mean Daniel H. Shreve all the time, had made two trips to Phoenix, and with the idea of taking—

Mr. Flynn: Just a minute, may I ask the witness a question?

Mr. Hardy: Well, I don't think it is proper.

Mr. Flynn: I want to know whether he is answering your question or one he thought up him-

(Testimony of Archie C. Shreve.)

self. He asked what was done. You are talking about Dan Shreve, so it is——

The Court: I don't know what he is talking [602] about.

Mr. Flynn: I want to know what Dan Shreve did before or after this happened. The question was directed to what happened after.

The Witness: I want to tell you what happened at the conversation with Dan Shreve, Mr. Perkins and J. H. Shreve and myself, when we met in San Diego, California.

Mr. Hardy: State that.

Mr. Flynn: State the conversation? We object to the conversation.

The Court: Why, it is not admissible, and I don't want any more of it. You are just wasting the Court's time by those tactics.

The witness continuing: I testified that I was replaced by my brother Dan H. Shreve in connection with the management of the Century Investment Trust and Security Building and Loan Association about March 1st, 1930, shortly before or after that date. Mr. Perkins remained here in Phoenix in connection with those companies, and I believe Mr. John C. Hobbs remained in charge of the office at Tucson. I met Mr. Watt two or three years before he came over here, probably in 1926, 1927 or 1928, I would not be sure. He was bookkeeper for my brother Daniel H. Shreve, for the Commercial Finance Corporation of San Diego. I believe he

(Testimony of Archie C. Shreve.)

was bookkeeper for that corporation in 1927, 1928 and 1929. Neither J. H. Shreve nor I had anything to do with that corporation. It was operated by Daniel H. Shreve and J. R. DeLatour. They were the principals. I know Mr. Watt was only here two or three months in the summer of 1930, June and July and August. He may have come over in May. He did not come at my direction. He came here to Phoenix with the Security Building and Loan Association, Century Investment Trust and Arizona Holding Corporation at the request of Dan Shreve. I know that of my own personal [603] knowledge. After Dan Shreve came over here to take charge, then Mr. Watt came over to Phoenix. Mr. Watt remained in the employ of these corporations until late in 1931. He may have been employed by some of them in 1932. I did not have connection with these corporations after they were closed in any manner. As Mr. Watt has stated, he worked for the Building and Loan Association, that is the Receiver of the Building and Loan Association, for some time after it was closed, and after the others were closed, I don't believe he had any connection with them. They might have been closed for several months afterwards, probably a year. Prior to the time Mr. Watt came over here to Phoenix with the Security Building and Loan Association and Century Investment Trust, he had never worked for either J. H. Shreve or me or any companies with which we were connected. I know that Loan

(Testimony of Archie C. Shreve.)

No. 6, the Overland Hotel and Investment Company loan, in the sum of \$30,000.00, was made. The original note and mortgage was made by the Overland Hotel and Investment Company to W. S. Millner on his agreement to arrange a loan for that company. I had an active connection or participation with that loan of \$30,000.00 which was made by the Overland Hotel and Investment Company. Mr. Millner didn't make the loan, so he signed this mortgage and the three notes, which eliminated the necessity of making new ones to the Security Building and Loan Association, and the profit from that loan was credited by the Security Building and Loan Association to the credit of the Arizona Holding Corporation, and the Arizona Holding Corporation credited the proceeds of it to the Overland Hotel and Investment Company. I have made an investigation of Defendants' Exhibit B, which is account No. 115 with the Arizona Holding Company, for the purpose of familiarizing myself with that loan transaction. Under date of September 23rd, there appears a credit of \$32,750.00, Bookman \$2750.00, Overland \$30,000.00. That was deposited, according to this sheet, making a balance at that time in the Arizona Holding Corporation and the Security Building and [604] Loan Association \$32,750.00, as of September 23rd, 1929, and soon thereafter, on October 7th, the next date, this check, being Defendants' Exhibit D, was drawn, in the sum of \$9000.00 by the Security Building and Loan

(Testimony of Archie C. Shreve.)

Association, payable to the Arizona Holding Corporation. That check was endorsed to the Alianza Hispana Americana Supreme Lodge by the Arizona Holding Corporation in payment of a part of the mortgage which was to be paid off on the property covered by the \$30,000.00 mortgage. The balance of the money was provided by other sources. After the check was drawn the balance then remaining in the account of the Arizona Holding Corporation was \$28,250.00. That \$9000.00 was a part of the proceeds of the \$30,000.00 loan. Defendants' Exhibit D, which is a check for \$9000.00, was delivered to the Secretary of the Alianza Hispana Lodge, Mr. Hobbs and I were present. I was personally present when this check was delivered. It was delivered for the purpose of paying off any existing mortgage against the property referred to in the thirty thousand dollar mortgage. It was the property adjoining the Santa Rita Hotel in Tucson. Evidently this \$30,000.00 loan of the Overland Hotel and Investment Company is the same loan which I heard Mr. Schroeder, the Government's witness, testify about. I have heard the testimony here with regard to what is known as the Rayburn loans. I know nothing whatsoever about those loans. I have no independent recollection of signing Government's Exhibits 141 and 145, which are exemplified copies of warranty deeds, as an officer of the Arizona Holding Corporation. I may have. If I did, I did so at the request of Daniel H. Shreve or Glen O. Perkins or someone

(Testimony of Archie C. Shreve.)

else. I would not say I did not sign it, if I could see the original I could tell you. At the time that transaction occurred, as appears from these exemplified copies, I was not actively engaged with the Arizona Holding Corporation. I had not been since March, 1930. These are dated July, 1930. I have heard some testimony with regard to the Shumway loans. I don't know anything about those [605] loans except what I have heard in this Court and the former trial. I knew Mr. Shumway. My acquaintance with him began the latter part of November, 1929. He was brought to the office by someone and recommended as a likely good man for working for the Building and Loan Association. Mr. Perkins and myself talked to him, and about that time he was given employment on a commission basis. I don't remember what the exact arrangement was but there was some kind of commission arranged at the time his employment began. I heard him testify that he went to work in the summer of 1930. He went to work just as he said, at the time he opened up the Building and Loan account. He also testified he opened an account and went to work at the same time. I was not here in the summer of 1930. I might have come through for a day. I was not at that time actively connected with the company in employing people at that time. I had nothing to do with its operation. I know something of the origination of loan referred to in the records of the Security Building and Loan Asso-

(Testimony of Archie C. Shreve.)

ciation as Loan No. 41, being a mortgage covering certain lands near Wellton, Arizona, one signed by F. D. Arrington and one by Lyda Dreyfus, which were made payable to Mr. Castle and in turn assigned to the Security Building and Loan Association. In the fall of 1930, my brother Daniel H. Shreve, came to San Diego. He was over there quite often, and made, as I was informed by him, a trade of certain property in Arizona. He traded a piece of property he had in San Diego. M. W. Mason, I believe, handled a part of the transaction. Mr. Hyde Pingy, he was the appraiser for the First National Bank in San Diego; M. W. Mason, I believe, was a brother of the Mr. Mason who testified here. I believe Mr. Pingy was a director of the bank, I am not sure. They brought it to me for the drawing of the papers and to handle legal details, made an escrow at the Sunset Building and Loan Association. My brother, Dan Shreve, asked me to look over the papers and handle it from a legal point of view so far as he was concerned. I did that. Mr. Valentine came into [606] the office and signed the deeds. I don't know who drew those deeds but I looked them over. There were some other papers prepared and I believe notes and mortgages were prepared in Arizona and forwarded to the Sunset Building and Loan Association. After they came they were signed. I don't have any recollection of ever asking Mrs. Dreyfus or Mr. Arrington to have signed those papers. I know that

(Testimony of Archie C. Shreve.)

when they were completed there was an assignment of two mortgages made by Mr. Castle. Those assignments were made in blank and sent to Dan Shreve in Arizona. They were forwarded by the Sunset Building and Loan Association. I had no interest in the transaction whatever. I never knew the property, never inquired about it, that is the property in Arizona. I never knew it was located in Yuma County until after this difficulty started.

Referring to Government's Exhibit 61, which is marked "General Ledger of the Century Investment Trust", Government's Exhibit 63, which is marked "General Voucher of the Century Investment Trust", Government's Exhibit 67, marked "Stockholders Ledger of the Century Investment Trust", and Government's Exhibit 68, marked also "Stockholders Ledger of the Century Investment Trust", and Government's Exhibit 66 in evidence, marked "Stockholders Ledger of the Century Investment Trust", and Government's Exhibit 65, marked "The Capital Stock Journal of the Century Investment Trust", the binders may be the same but the books are not the books that were in use by the Century Investment Trust at the time I was here in Phoenix in connection with that company. The contents are not the same. I heard the testimony of R. F. Watt, witness for the Government, that he rewrote the books. I did not direct him to rewrite these books. I don't know anything about the rewriting of these books. I never heard tell of

(Testimony of Archie C. Shreve.)

the books being rewritten before the trial of this case in Tucson in 1934. That is the first time I ever knew of these books being rewritten. In rewriting of these books, as testified to by Mr. Watt, I did not direct him to make any of the entries in these books. I heard John C. [607] Hobbs, who was a witness for the Government, testify on the occasion when he and Mr. Perkins came to San Diego in the summer or fall of 1931, and had a conference with me and J. H. Shreve with reference to the affairs of the Security Building and Loan Association. I believe Mr. Perkins and my brother Daniel H. Shreve telephoned me and asked for J. H. Shreve or myself to come to Phoenix. I told them it was not possible for us to come here and they wanted to hold a conference with us and were attempting to borrow some funds for the Building and Loan Association. As to who was to make the loan I could not say. Mr. Perkins and Dan Shreve were the people asking for a loan on behalf of the Security Building and Loan Association or the Century Investment Trust. Mr. Perkins and Mr. Hobbs came to San Diego at their request.

Q. And what was said or done after they arrived in San Diego?

A. Mr. Perkins and Mr. Hobbs and myself, my brother J. H. Shreve—

Mr. Flynn: We object to any conversation at this conference, on the ground that no proper foundation has been laid, and neither Mr. Hobbs nor Mr. Per-

(Testimony of Archie C. Shreve.)

kins, when they were on the stand, no impeaching questions were asked, and the further ground it is self-serving.

The Court: Sustained.

Mr. Hardy: A. Well, at this time Mr. Hobbs and Mr. Perkins came to San Diego, California, was there any discussion with respect to the business of either the Security Building and Loan Association, the Century Investment Trust or the Arizona Holding Corporation?

A. There was a discussion of the business of the Security Building and Loan Association, and the other companies may have been mentioned. [608]

Q. And what was the nature of that discussion?

Mr. Flynn: We object to that on the ground it is immaterial, it is self-serving, and no foundation being laid for any impeaching question.

The Court: Yes, the same question.

Mr. Hardy: Exception.

Q. Did you at any time, while these corporations, the Arizona Holding Corporation and the Security Building and Loan Association and the Arizona Holding Corporation were functioning, have any discussion with Mr. Perkins or Mr. Hobbs about the overhead expenses of those companies?

A. I did.

Q. Will you please state what that conversation was?

Mr. Flynn: I object to that on the ground that no time is fixed, that it is self-serving; no founda-

(Testimony of Archie C. Shreve.)

tion being laid for an impeaching question.

The Court: Sustained.

Mr. Hardy: Exception.

The witness continuing: I am familiar to some extent with the minutes and the minute book of the Security Building and Loan Association. I examined those minutes since they have been here, in Tucson, and at other times. I refer to Government's Exhibit 75. I have seen those minutes. Up to March, 1930, I might have assisted in writing some of these minutes. After that date I would not know what the minutes contained, except probably having looked over them since the trial in Tucson in the fall of 1933 or the spring of 1934. I did not have anything to do with the making or writing of these minutes after March, 1930. It was possible I was consulted at some time about some of the affairs of the Building and Loan Association, but I have no recollection of [609] having anything to do with the minutes. After March, 1930, I did not make or cause to be made or consent to the making of any entries in the books or records of the Century Investment Trust, Arizona Holding Corporation or Security Building and Loan Association. I do not know by whom or at whose direction the entries after that date in those books were made. During the years 1928, 1929, 1930 and 1931, I was employed by the Southwest Union Securities Corporation and Pantages, Mills, Shreve & Company, principally. I might have done legal work for the company too.

(Testimony of Archie C. Shreve.)

I might have drawn a salary from the Commonwealth Building Company for a portion of that time. During that time I did not devote all of my attention to either the Overland Hotel and Investment Company or the Arizona Holding Corporation or the Century Investment Trust or the Security Building and Loan Association. The only time I devoted to the Arizona Holding Corporation and Century Investment Trust or the Security Building and Loan Association was prior to the early part of March, 1930. I was interested in the Overland Hotel and Investment Company after that date but my connection with that company was because of my employment with the Southwest Union Securities Corporation, in San Diego, which company owned certain stock and interest in the Overland Hotel and Investment Company, which owned the Santa Rita Hotel. The Overland Hotel and Investment Company was organized, I believe, in Nevada. Mr. Ralph Jenney organized it. The books and records of the Overland Hotel and Investment Company were kept in San Diego in my custody, and E. Rudolph Kelly. They were in my office at all times, except the operating books of the Santa Rita Hotel, guest accounts, and expenses of the operation of that hotel. None of the corporate records and the main accounts of the company was kept in Tucson, nothing but the operation of the hotel. It had a bank account in Arizona, I believe. Naturally it would have, but that was only carried

(Testimony of Archie C. Shreve.)

in connection with the Santa Rita Hotel. None of the corporate records of the Overland Hotel and Investment [610] Company were ever kept in Tucson except the records of the guest accounts and expense accounts in connection with the operation of that hotel alone. Those reports were forwarded to the main office in San Diego and written into the main books of the company. The Southwest Union Securities Corporation owned a substantial portion of the stock of the Overland Hotel and Investment Company. They were the largest stockholder. The balance of the stock was held in Tucson by Hi Corbett, Dr. Hoffman, Dr. Butler, Mr. Hoffmeister, and Mr. Nathan, and many others, I don't remember who. I did not draw any salary from the Overland Hotel and Investment Company. I drew a salary from the Southwest Union Securities Corporation, as director and Vice-President and attorney. I have heard Mr. Watt testify about taking some of these books of the Century Investment Trust and the Arizona Holding Corporation out of my automobile in San Diego. Mr. Evans had my automobile, made a trip to Los Angeles, and I assume those are the books and records he is referring to. I don't know whether Mr. Evans brought them there except what he told me. I mean W. C. Evans, a witness for the Government. I have loaned him my automobile on many occasions. I did not loan him my automobile particularly to get those books with. He had my automobile to go to Los Angeles, and when he came

(Testimony of Archie C. Shreve.)

back he had those books and records. I don't know what all he did have. I didn't look carefully; I just took a casual look. He had some books. I was told there were certain books of some company in Arizona, and it later developed it was the Century Investment Trust and Arizona Holding Corporation. Those books were delivered to Dan Shreve. Mr. Evans and Dan had the books in their possession in San Diego. That was room 620 Commonwealth Building, which was a large office occupied by a good many people. That office was occupied by more than one corporation. There was the Guardian Western Company, and I believe, the Exchange Securities Corporation. They were two companies that were active in the business. There were two or three other corporations there. Mr. Cook had [611] some water company and I believe there was a mutual water company occupying space in there, just had a desk there and some records. I will describe 620 Commonwealth Building. It was not a private office. It was four big rooms in the building turned into one room, on the sixth floor of the building. A partition was knocked out, and there was an office at one end, and it was about two or three feet, was of tile; that is, regular wall, and there was about three or four feet of plain, clear glass all the way across, and the balance of the wall was regular wall that you could see from the main office into the private office. It was only private for conversations and conferences. It was not the private office

(Testimony of Archie C. Shreve.)

of anybody in particular. Everybody used the office as a conference room. All the employees and everyone in the office had a desk in the outside office. That office was only the private office for me or Mr. Cook or Mr. McIntosh and a half dozen different people. Had six or eight real estate brokers and if they had a deal they would go into the office to work on it. That is in the office I have described, with one end with glass, and you could see all the way through. The main office, the big office, was composed of four rooms, about sixty to eight feet long. This office was separated from the large office with glass and a door swinging either way. There were one or two desks and a large table, several files and a safe, I believe, in that office. I recall when Mr. Watt returned to California early in 1932. I don't know what he did when he first returned, but I know he was finally given a job as a bookkeeper for the Commonwealth Building Company. That was a corporation operating in San Diego, which owned and operated the Commonwealth Building, which is a six story building and covers half a block on B Street from Fifth to Sixth. I don't know of my own knowledge whether he ever did any work there on the books and records of the Century Investment Trust or the Arizona Holding Corporation, except I know of a certain bankruptcy schedule that was prepared and he and Dan might have done [612] some work on the books of the Century Investment Trust and the Arizona Holding Corporation. I

(Testimony of Archie C. Shreve.)

wouldn't know, because I was not interested in them. Mr. Walter Wood made two or three trips over to San Diego, probably more than that, in connection with the books of the Century Investment Trust and the Arizona Holding Corporation. I saw him on some of those trips and had conversation with him. He came to San Diego and wanted to get the books of the Arizona Holding Corporation. Dan came to me and wanted to know if he could have them. I advised my brother that unless Mr. Wood had some authority from some stockholder or creditor, that as a matter of right he was not entitled to see the books or have the books. There was no objection particularly to show them to him, but that he had no legal right to see those books. That was the first time I remember. Then he returned and had some authority, I think, from somebody, to see the books. It was taken up with me again. I said I could see no reason why he should not see them if he wanted to. I didn't know he was particularly entitled to see them, but he was given access to the books. I advised my brother Dan Shreve that any time he produced proper authority, any reasonable authority, to let him see them. It was apparent that there was an effort being made to put them in the hands of the Receiver, from the conference I had. I know just what was told me, that some of these books which Mr. Wood requested were actually shipped to him here in Phoenix. I might have told him to pack and ship them. I had a conversation with Mr. Wood, along with Dan Shreve, in regard to

(Testimony of Archie C. Shreve.)

shipping the books to Arizona. I did not oppose the shipment of the books here. I am the man who advised it. I was representing Dan Shreve and Mr. Watt—I don't know whether I was representing him, but they were taking my advice. I testified about the filing of the bankruptcy schedule of the Security Building and Loan Association. They litigated the Building and Loan Association over here for a long time, since 1931, and up until the fall of 1932, and had been holding hearings [613] before the Referee in Bankruptcy, and finally Dan and Mr. Watt or somebody came to me, as their attorney, and asked what to do. I said, "Well, the only thing to do is, that the officers of that company should file, I believe the law requires them to file a schedule." I was not sure at the time whether the schedule should be filed by officers of the company or the Receiver. I was told that the Receiver had declined to file a schedule, to have a certified audit by Mr. Crane, and I told Mr. Watt if he would get that audit and get a set of bankruptcy schedules from the bankruptcy court, that I would assist him and Dan in the preparation of that schedule, and I did it, as attorney, and figured out the legal work and the way to do it to comply with the law. I told them that in my opinion they would be in contempt of court if they did not file that schedule. I testified that the copy of A. W. Crane's audit of the Security Building and Loan Association was attached to that schedule. In other words,

(Testimony of Archie C. Shreve.)

took his audit and by reference all the way through, the printed schedules referred to that audit, and that constituted the schedule. It was actually signed by Mr. Watt. I believe Mr. Perkins was Secretary and tried to get him to sign it, and he wouldn't do it. I recall the meeting testified to by Mr. Watt and Mr. Perkins, had at Wellton, Arizona, with J. H. Shreve, Glen Perkins, Dan Shreve, Mr. Watt and myself. It was early in 1932, about two or three months I would say after the closing of the Security Building and Loan Association. Dan phoned and asked us to come over and meet them some place, he wanted to discuss his affairs. The meeting was held at Wellton. It is about half way, and we were busy and the suggestion was made that we meet him half way, and we just met there, that is all. Mr. Perkins came with us from San Diego. I don't remember how he happened to come along but I imagine they wanted to discuss the predicament they found themselves in, and had the meeting. Mr. Watt was along with Dan. Mr. Perkins was living in San Diego at that time. I am reasonably sure he had [614] left Phoenix. Dan and Mr. Watt had been here in Phoenix at that time, in charge of these corporations. The meeting was held at Wellton between the gentlemn I have named, including myself. There was not anything done or said particularly except to discuss matters. Dan told us of his ideas about his predicament in Arizona. He was President of the company at that time. He

(Testimony of Archie C. Shreve.)

was, and he wanted us to help him, advise him what to do, if we could. No program was arrived at in respect to these companies at that meeting in Wellton. I think Dan discussed some program with Mr. Evans of Los Angeles with regard to opening an office in Los Angeles of the Century Investment Trust. I don't believe a future program with respect to the Arizona Holding Corporation was discussed. Dan Shreve delivered to me and my brother J. H. Shreve one, two or three bundles. I believe they were delivered in the presence of Mr. Perkins and Mr. Watt. We took the bundles in the car to San Diego. Mr. Perkins returned to San Diego with me in that car. I placed the bundles in my room in San Diego, and it was clothing. I placed the bundles in the back tonneau. In the bundles there was clothing and personal effects belonging to Dan Shreve's child. He had a young daughter, that is, his wife and daughter lived over here and he still had some personal effects. Those I took back with me. There were no books or records of any corporations in any of those bundles. At the termination of this conference in Wellton, Dan Shreve and Mr. Watt returned to Phoenix. I am not sure how long after that Dan Shreve or Mr. Watt remained in Phoenix. Mr. Watt came to San Diego some time in the spring or the early part of 1932. Dan came soon after that, probably in the spring or summer of 1932. Dan Shreve wrote insurance in San Diego for the Guardian Western Company on

(Testimony of Archie C. Shreve.)

a commission basis. After he left Phoenix, I don't believe he had any connection with any of the other corporations in San Diego with which I was associated or employed, except the Guardian Western Company. I believe Mr. Watt came to San Diego before Dan did. Dan sold insurance and he [615] also sold real estate. I know from what I learned that Mr. Watt, after he returned to San Diego, did some work on some of the books of the Century Investment Trust and Arizona Holding Corporation. I didn't see him do the work. I did not request him or advise him to do any work on any of those books. Dan Shreve, if there was any done. I do not know anything about any entries that were made in any of these books in San Diego by Mr. Watt. I neither approved nor disapproved of any entries which were made in San Diego by Mr. Watt. I don't know what they were. I haven't the slightest idea of what kind of entries were made or what transactions they pertained to. I never had any experience myself in bookkeeping. Recalling the time in San Diego when Mr. Watt was working on some of these books, I have a recollection of the circumstances surrounding his quitting. It was about the time the bankruptcy schedule was prepared. I testified that Mr. Watt, after he returned to San Diego, was working for some corporation over there. When he had some of those books in his possession he discussed it with me. They are books of the Century Investment Trust and Arizona Holding Corporation that are in evidence here in this case. He was working for the Commonwealth Build-

(Testimony of Archie C. Shreve.)

ing Company after he returned from Phoenix to San Diego. I believe the Commonwealth Building Company was mentioned several times in the trial of this case.

Mr. Hardy: May it please your Honor, in reference to the three questions which were asked of this witness pertaining to the conversation on December 20th, and the conversations early in the year 1930, and a conversation in February, 1930, between this defendant and the defendants J. H. Shreve and Glen O. Perkins, and J. C. Hobbs, which, upon objection by the United States Attorney, were held inadmissible, and which objection was sustained, may we have the privilege at this time, for the [616] purpose of the record only, of making an offer of proof in regard to those questions?

The Court: No.

Mr. Hardy: May we file with the Clerk of the Court a written offer?

The Court: You can do that if you want to, but you can't get it before the jury.

Mr. Hardy: Can we make it without the presence of the jury?

The Court: No, you may write it out.

Mr. Hardy: And may it be considered as a part of the evidence?

The Court: It would not be a part of the evidence because it is not admitted.

Mr. Hardy: As part of the record in this case?

The Court: You can file it with the Clerk.

Mr. Hardy: Then, may we have an exception to the refusal to be permitted to make the offer?

(Testimony of Archie C. Shreve.)

The Court: Yes.

The offer of proof which was filed with the Clerk is as follows:

We now offer to prove by this witness that a conversation took place at San Diego, California, during the summer or fall of 1931, at San Diego, California, between Jesse H. Shreve, Glen O. Perkins, John C. Hobbs and this witness A. C. Shreve, at which time substantially the following conversation was had:

Mr. Perkins stated that Security B & L was having heavy demands for withdrawals by its depositors and that the association was unable to meet the demands; that it would be necessary for them to borrow \$50,000; that he wanted to make arrangements in San Diego or [617] somewhere to borrow \$50,000 for and on behalf of the Security B & L., Century Investment Trust and Arizona Holding Corp. Jesse H. Shreve stated that he was in no position to make the loan, that he could not arrange such loan and did not know of any place where such loan could be obtained. Mr. Perkins then stated that he would like to have some advice as to what course the building and loan assn. could follow. A. C. Shreve stated that unless they could meet the demands for withdrawals or arrange for a loan to meet them, or make some satisfactory arrangements that it was his opinion that they would be placed in the hands of a receiver. Mr. Hobbs and Mr. Perkins stated that they believed

(Testimony of Archie C. Shreve.)

they could make the necessary arrangements somewhere else, if we were unable to assist them, and keep the business going and finally meet the demand. At that conversation A. C. Shreve asked if their minutes and books of the meetings of Security B & L, Ariz. Hold. Corp. and C. I. T. were up to date, to which Mr. Perkins and Mr. Hobbs both replied that the books of both offices were up to date; they also stated that the minutes of meetings of the officers and directors were up to date, as they had been kept from the beginning of each Company.

Defendants offer to prove by this witness that a conversation took place between Jesse H. Shreve, Glen O. Perkins and this witness, being the only persons present, held early in December, 1929, in the office of the Security Building and Loan Assn. and Century Investment Trust on the ground floor of the Adams Hotel Building, on Central Avenue in Phoenix, Arizona, substantially as follows:

Jesse H. Shreve stated that he was going to [618] withdraw from further participation in any management, control and operation of the Security Building and Loan Assn., Century Investment Trust and Arizona Holding Company; that he would give a reasonable time, but not to exceed two or three months, so that someone else could take his place. Glen O. Perkins stated that he was sorry but that he would make arrangements for someone to take over the interests of Jesse H. Shreve and Archie C.

(Testimony of Archie C. Shreve.)

Shreve in those corporations; that he would arrange to relieve Jesse H. Shreve and Archie C. Shreve of all further liability for the operation, management and control of the three companies; that he would be able to make this arrangement within not to exceed ninety days. Jesse H. Shreve thereupon stated that he thought that the deals pending for the exchange of stock of Century Investment Trust for stock of other corporations, particularly those represented in San Diego, California, should be rescinded. Mr. Perkins replied that such arrangement would be agreeable to him and that he would work the matter out. Mr. Perkins requested that A. C. Shreve assist him from time to time for two or three months in connection with the affairs of the three corporations. A. C. Shreve stated that he would give some of his time to the business, that part of his time would have to be devoted to the affairs of the Overland Hotel and Investment Company in connection with the Santa Rita Hotel at Tucson, Arizona, and that part of his time would be required in connection with his employment and business at San Diego, California.

We offer to prove by this witness that a conversation took place between Daniel H. Shreve, Jesse H. Shreve, [619] Glen O. Perkins and this witness some time during the month of February, 1930, at San Diego, California, at which conversation no one else was present, which conversation was substantially as follows:

(Testimony of Archie C. Shreve.)

Daniel H. Shreve stated that he had been to Phoenix, Arizona, and looked into the affairs of the Security Bldg. & Loan Assn., Century Investment Trust and Arizona Holding Corporation; that he had concluded to purchase and take over all of the interest of J. H. Shreve and A. C. Shreve in those companies; that he in conjunction with Glen O. Perkins and Mr. Hobbs would assume complete responsibility for the operation, management and control. Mr. Perkins stated that such arrangement was satisfactory and agreeable to him. J. H. Shreve and A. C. Shreve stated that they had discussed the matter with them and that they had transferred and delivered to Daniel H. Shreve all of their stock in said corporation. [620]

The witness continuing: The Overland Hotel and Investment Company mortgage was paid and satisfied. I did not have anything to do with Government's Exhibits 158 and 159, which is an envelope addressed to Mr. Fred Sweetland. The letter which is contained in that envelope, as testified to here, is signed by the Security Building and Loan Association, John C. Hobbs, Vice-President. I did not have anything to do with the preparation of the statement attached to that letter which is marked Government's Exhibit 160. The first time I ever knew anything about that letter and the statement of the Security Building and Loan Association was when I received a copy of the indictment either in this case or in the previous trial. The first time

(Testimony of Archie C. Shreve.)

I ever actually saw the exhibits themselves was in the first trial of this case in 1934. I never participated in the preparation or the writing or the mailing of Government's Exhibit 161, a deposit slip, addressed to O. Hohenstein, with envelope attached, and Government's Exhibit 167, a letter with the envelope attached; Government's Exhibit 166, addressed to Mr. Henry Baker, Government's Exhibit 163, being an envelope addressed to Mr. Wesley Palmer, with letter attached, and addressed to Mr. Wesley Palmer, and Government's Exhibit 164, and Government's Exhibit 165, addressed to Mr. O. H. Robson and Mrs. Mary Robson, and Government's Exhibit 163 under the name of Mrs. Helen Hammon in pen and ink at the top of the Exhibit, and Government's Exhibits 168 and 169, being an envelope addressed to Mr. Harry Nelson and Mrs. Anna B. Nelson, and also a letter addressed to Mrs. Harry Nelson and Mrs. Anna B. Nelson, and also Government's Exhibits 205 and 206, being an envelope addressed to Mrs. Alice H. Davis, and also a letter addressed to Mrs. Alice H. Davis, and Government's Exhibits 181 and 182, being an envelope addressed to Mrs. Lulu Gatlin, to which is attached a letter addressed to stockholders.

Q. Were any of those exhibits, to your knowledge, prepared in San Diego, California? [621]

A. They were not.

Q. Were any of them ever prepared, or was the preparation or the supervision of any of them done in San Diego, California?

(Testimony of Archie C. Shreve.)

Mr. Flynn: Just a minute, we object to that on the ground that no foundation has been laid, has not been shown he had knowledge of where or how or who prepared them, or who didn't prepare them, therefore, his testimony is incompetent.

The Court: Yes; he doesn't know where they were prepared.

Mr. Hardy: Exception.

The witness continuing: I never heard of any of these letters or knew anything about them, or had anything to do with them in any manner whatsoever. The first time I knew about them was at the inception of this lawsuit when the indictment was returned. They might have been set forth in the other indictment.

Q. Now, Mr. Shreve, I hand you Government's Exhibit No. 207, which is a pamphlet or a circular of the Century Investment Trust, and which was identified by Mr. Perkins, the witness for the Government in this case. Did you ever have any conversation with Glen O. Perkins with respect to that circular?

A. I have.

Q. State what the conversation was.

Mr. Flynn: Object to it on the ground the time and place and those present has not been fixed.

Mr. Hardy: Q. Well, can you fix the time and place and who was present at the time you had this conversation with Mr. Perkins?

A. Early in 1930, January or February [622]

(Testimony of Archie C. Shreve.)

Q. Where?

A. At the office of the Century Investment Trust, Adams Hotel Building, Phoenix, Arizona.

Q. Who was present?

A. Myself and J. H. Shreve.

Q. Who else?

A. No one else.

Q. Was Mr. Perkins present?

A. I said Mr. Perkins, myself and J. H. Shreve.

Q. What was the conversation with Mr. Perkins in respect to that circular?

Mr. Flynn: We object to it on the ground it is hearsay, self-serving, and no foundation has been laid for any impeaching question.

The Court: Probably is self-serving.

Mr. Hardy: Very well, your Honor. May we have an exception and may we also ask to make an offer of proof by filing it with the Clerk in connection with this Exhibit No. 207?

The Court: Very well.

Mr. Hardy: And that the offer of proof is denied, and we may have an exception to the denial.

The offer of proof filed with the Clerk is as follows:

We now offer to prove that there was a conversation held between Glen O. Perkins, A. C. Shreve and Jesse H. Shreve early in 1930, at the office of the Security Building and Loan Assn., Adams Hotel Bldg., Phoenix, Arizona, at which time substantially the following conversation took place:

Mr. Perkins presented a printed circular [623]

(Testimony of Archie C. Shreve.)

bearing a printed signature purporting to be a facsimile signature of J. H. Shreve, and stated that that circular had been written and had been printed by certain salesmen working under he, Mr. Perkins. J. H. Shreve thereupon stated that the circular must not be circulated or distributed, that it was wholly without his authority, that he did not and would not approve of it, that he had not authorized it, and would not permit it to be circulated. J. H. Shreve further stated that he had no connection with the operation, management or control of the company and did not want his name to be used in connection with it; that he had formerly withdrawn from further participation in the affairs of the company, except in a nominal capacity, awaiting Mr. Perkins' promise to replace him on the board of directors and as an officer of the companies, and that he was expecting him to carry out the promise which he had made in December, 1929.

[624]

The witness continuing: With reference to Exhibit 207, I did not mail it or cause it to be mailed, or one of the same kind. The circular was presented and by me and others ordered destroyed and not distributed or circulated by anyone to anyone.

Cross Examination

I started to practice law in San Diego in 1911. I was not associated with anyone in 1929 and 1930 and 1931. At that time I was engaged in em-

(Testimony of Archie C. Shreve.)

ployment with the Southwest Union Securities Corporation, as an officer of that corporation and active as its attorney. My office was in the Commonwealth Building. That is not the same room I described here; the same building, but not the same floor, in 1929. We moved from the ground floor of that building in 1932, I believe, to the sixth floor. I had an office in 620 Commonwealth Building at that time, I believe, from 1930 until we moved from there about two years ago. I believe I first met Mr. Hobbs at the Santa Rita Hotel some time in 1928 or the early part of 1929. I don't recall ever having met him prior to that time. I was over there on business in connection with the Santa Rita Hotel and the Overland Hotel and Investment Company. I knew Mr. Perkins prior to that time, when he was in San Diego, I met him in connection with some lawsuit. The first talks I had with Mr. Hobbs and Mr. Perkins, J. H. Shreve was not present. That is at the preliminary talks about the organization of the Building and Loan Association or taking over the Arizona Holding Corporation. The first time they approached me in connection with becoming interested in the Arizona Holding Corporation or the organization of the Building and Loan Association, I think, was the early part of 1929, probably the latter part of February or early in March. They may have spoken to me before that on some trip over there. It was about the 8th of March that I, J. H. Shreve, or some of the

(Testimony of Archie C. Shreve.)

others did become interested in it. To the best of my recollection it was within thirty days prior to the [625] time I first talked with Hobbs and Perkins about it. There might have been something said before that, but I don't have any independent recollection of it. Between the first time and the 8th of March, I had a talk with one or both of them. In one of these conversations, one or the other of these men told me they had raised approximately \$35,000.00 for the Arizona Holding Corporation. I told these men that I would not be interested until they came to San Diego and talked to myself, J. H. Shreve, Mr. Cash and two or three other people. I think the first time there was any real interest was in March, 1929. I think the first time they talked with me they told me that they had a substantial part of the money raised and they could not seem to get the balance; they had taken a commission of twenty per cent and they could not return it and did not know what to do. I believe it was in Tucson that I told them I would take it up with our associates. By our associates I meant Mr. Cash, my brother, J. H. Shreve, and two or three other people, I believe, Mr. Kelly, and I don't know who else. I could not say how much Mr. Cash invested in the Arizona Holding Corporation or the Security Building and Loan Association. I know that he did invest but I don't know how much. I know he had stock in the company and that he went there as an officer and directing head of the

(Testimony of Archie C. Shreve.)

company. I heard Mr. Cash's testimony when he was on the stand here. I don't think Mr. Cash said he didn't have an investment in the company. I had known Mr. Cash in San Diego a good many years, didn't know him before he came to San Diego. He had been in the banking business in San Diego, with the United States National Bank, I believe he was Assistant Cashier. I don't remember what capacity he had with the bank. He was for a time associated with the branch of the Southern Trust and Commerce Bank in the Imperial Valley, I believe, as manager. Just prior to the time he came to Arizona in connection with these companies, I believe he had been Cashier of a bank at Balboa. Mr. and Mrs. Cash operated an apartment house. They purchased it from [626] the Western Securities Corporation, I believe. That is the same company I was working for. He still owns some interest in it and operates it today. I don't remember whether he owned it in 1929 and 1930 when he came over here; I can't say without looking up the record. I believe he owns a half interest in it along with a man by the name of Ray Harris, who is an attorney in San Diego. I don't believe I was here when the Security Building and Loan Association was organized and started business, had their first meeting. It has been a long time and I would not be positive. Mr. Cash was elected Manager of the Tucson office at the time of the organization of the company. I talked with Mr. Cash about it and

(Testimony of Archie C. Shreve.)

have gone over the situation. I know he was here and was elected Secretary of the corporation and opened its books and assumed the management of the company. My testimony to the effect that Mr. Cash was put in as Manager of the Tucson office is not based upon what he told me; it is based upon what I learned and from what I knew from reading the records. I was at these meetings soon after the organization of the Association. I became a Director of the Security Building and Loan Association soon after it was organized. That was prior to the time it opened an office in Phoenix. The company was opened in Tucson. I think the office in Phoenix was opened on November 23rd, 1929. I was over here at the time. I may have been over here for a week prior to that time. I may have been here two or three times before the Association opened. I was here solely for the purpose of opening that Phoenix office of the Building and Loan Association and the Century Investment Trust. I stated on direct examination that Mr. Perkins first suggested the opening of the Phoenix office. I don't remember whether it was taken up with Mr. Cash or Mr. J. H. Shreve. If I testified that I told him to take it up with Mr. Cash and Hobbs, that is correct. I don't know how much money Mr. Hobbs and Mr. Cash had invested in the companies at that time. I believe I had invested a thousand dollars. I am not sure of the exact [627] amount J. H. Shreve had invested in the Security Building and Loan

(Testimony of Archie C. Shreve.)

Association. The stock that controlled the Building and Loan Association was owned by the Arizona Holding Corporation. I had a thousand dollars invested in the Arizona Holding Corporation. My brother, J. H. Shreve, had a substantial amount invested in the Arizona Holding Corporation, twelve or fifteen thousand dollars. I would not say how much stock Mr. Cash or Mr. Hobbs had in the Arizona Holding Corporation. I did not spend practically all of my time here in Phoenix in connection with the company after the office was opened, from then until March or April, 1930. I spent part of my time here, probably I might have come here and spent a week, come back and spent a day or two, to Tucson and go back to San Diego. I am not sure, but I was here a good part of January and February, 1930. I may have been here a part of March. I stayed at the Adams Hotel. I don't know whether I stayed there every day or not in January, February and March. I was here on this business in connection with the Security Building and Loan Association and the Century Investment Trust, which was operated here at that time. I testified on direct examination that I took care of the legal details of the organization of the Century Investment Trust, primarily at the request of Mr. Perkins. I was interested in it. The organization of the new company was discussed quite extensively on several occasions. The Arizona Holding Corporation was not doing very well and that was pri-

(Testimony of Archie C. Shreve.)

marily the reason Mr. Perkins gave me for wanting to organize a new company. I don't believe the Century Investment Trust had larger powers according to its articles of incorporation than the Arizona Holding Corporation. It might have. I have never compared the two sets of articles of incorporation of both companies. Probably both are general in nature and covered everything. The advantage of organizing a new company, it seems that the Arizona Holding Company had sold their stock and issued it in such a manner as to create some criticism from some source, I don't remember from where [628] or what, but it had met with obstacles, he stated, in selling the stock, raising funds, and that he didn't believe he was going to be successful in raising additional capital as he had thought. The plan was, when the Century Trust was organized, to take over the assets of the Arizona Holding Corporation. In drawing up the articles of the Century Investment Trust I provided for three classifications of stock, preferred, Class A preferred, and common. A deal was proposed for the Century Investment Corporation to exchange some of its stock with the Century Corporation for stock in the Southwest Union Securities Corporation. As to whether or not the exchange was ever affected is some question to my mind. I know the deal was in the making but neither stock was ever delivered. Century Investment Corporation stock was never delivered and

(Testimony of Archie C. Shreve.)

neither was the Southwest Union Securities Corporation stock. When the office opened here in Phoenix the office space was rented from Mr. Norris of the Commercial National Bank. I am not positive, but I think that is correct. I think the bank had a lease on that room that the Building and Loan Association occupied, which adjoined it. I testified, I believe, Mr. Perkins made the arrangements with Mr. Norris for that lease. I would not be positive. Mr. J. H. Shreve and I had many negotiations with Mr. Norris about that time. I believe we discussed with him the Century Investment Trust, along with some other banks. I am not sure, but we may have had negotiations with Mr. Norris about the purchase of the bank from him. I know Mr. Norris came to San Diego several times, and I would not say it was before that or after. He made many trips over there. About the time the Century Investment Trust was organized, I discussed it with Mr. Norris extensively, and the plan was to join into the organization of it. I forget the attorney's name, associated with Mr. Norris, who made a trip to San Diego in connection with it. I believe Mr. Norris at that time was your law partner in Prescott, Arizona. There were many conversations with Mr. Norris in reference to that bank and [629] other banks. I would not say whether it was before or after the Phoenix office of the Security Building and Loan Association was opened. I believe Mr. Ames was employed as a stock salesman

(Testimony of Archie C. Shreve.)

when the Security Building and Loan Association was opened up in Phoenix and the Century Investment Trust was organized. Mr. Ames probably was from Los Angeles or Kansas City. Mr. George was from Phoenix. I don't think I was a director of the First National Bank of Prescott during that period. It was a considerable time after that. I was only a director of that bank for about a week. We had negotiations on foot to sell the bank at that time, which you are familiar with, I believe. I think I was in Phoenix on one or more occasions during the summer of 1930. Government's Exhibit 141, which bears date of July 21st, 1930, being a warranty deed from the Arizona Holding Corporation to A. E. Rayburn, signed by the Arizona Holding Corporation by A. C. Shreve, Vice-President, appears to have been signed by me in Phoenix on or about the date it bears. I have no independent recollection of having signed that. I probably signed it. I would not say I did or did not. I do not recall knowing Fred B. Grant, a Notary Public in San Diego in 1930. I knew Mr. L. P. Valentine. I met him on one or two occasions. I was told he lived in San Diego or Los Angeles, I don't know which. I just met him on one or two occasions. I did not know B. A. Mason until I saw him in court in Tucson. I knew his brother, M. W. Mason. I knew H. M. Howrey, a Notary Public in San Diego, in 1931. He was Secretary of the Sunset Building and Loan Association, I believe one of its

(Testimony of Archie C. Shreve.)

principal officers. I was not interested in that company. The office of the Sunset Building and Loan Association was on the ground floor of the Commonwealth Building at Sixth and B Streets. It occupied space in a very large office. I understood it did a general building and loan association business. I know Eva F. Hill, a Notary Public in San Diego. In 1930 she was an auditor and book-keeper, I think, employed by Pantages, Mills, Shreve & Company, at that time. If not, [630] she was working for her husband who was a certified public accountant at San Diego. I don't know whether she is a certified accountant or not. I stated on direct examination that I know something about the Overland Hotel and Investment Company—Millener loan. That is my signature on Government's Exhibit 96, being a draft of the First National Bank of Prescott, Arizona, for \$30,000.00, signed by the Security Building and Loan Association, A. C. Shreve and J. G. Cash. At the present time I do not recall the circumstances surrounding the issuance of that draft. I could look back over the records and be able to. That is my signature on Government's Exhibit 117, being a realty mortgage dated the 21st of September, 1929, signed by the Overland Hotel and Investment Company by A. C. Shreve, Vice-President, W. Olson, Assistant Secretary. That purports to be a realty mortgage on some property of one William S. Millener. That is the William S. Millener who testified here for the

(Testimony of Archie C. Shreve.)

Government in the early part of this trial. I signed that as Vice-President of the Overland Hotel and Investment Company. The Overland Hotel and Investment Company did not receive the \$30,000.00 or any part of it from W. S. Millener at that time, or at any time, in consideration for the execution of this mortgage. I explained to you this morning that that mortgage was made to W. S. Millener, who was negotiating that loan, and he failed to get the money, and the mortgage was assigned to the Building and Loan Association by him to save the trouble of making a new mortgage. In effect the loan was made by the Security Building and Loan Association to the Overland Hotel and Investment Company. There was no purpose in passing it through the name of W. S. Millener. It was more of an accident than a—Mr. Millener was located in San Diego at that time, in the mortgage business. I believe his office was at 640 B Street. I am not sure of the address. At one time he was associated with Mr. Darland. I could not be positive who he was associated with in the fall of 1929. I had other transactions with him prior to that time. I had known [631] Mr. Millener I would say three or four years prior to 1929. This loan was paid. I delivered a part of the funds in payment of it, the check of the Overland Hotel and Investment Company. I think it was paid to the Security Building and Loan Association, but when, I could not be positive, sometime in 1930, and that

(Testimony of Archie C. Shreve.)

was the check to the Overland Hotel and Investment Company. I do not know whether all the mortgage was paid at that time. I remained an officer and was connected with the Overland Hotel and Investment Company from soon after the time it was organized until two or three years ago. I was connected with it at the time of the former trial of this case in Tucson. Defendants' Exhibit D is the one I have testified in regard to on direct examination. I testified that that was a part of the proceeds of this loan. I would not say it is a part of the money that was received from the—the proceeds of the loan was deposited on account. It was a running account and other deposits made in it before and after the check was drawn, and when that check was drawn the account went below \$30,000.00, and it never did exceed thirty-seven or eight thousand dollars, apparently, from the time it was opened until the time that check was drawn. I do not know whether this was proceeds of this \$30,000.00 draft. I have not checked on it. I would not know. I do not know whose handwriting these entries are on Government's Exhibit 78, Security Building and Loan Association account book, page 13, the entry marked No. 5, \$30,000.00, pass book account, Arizona Holding Corporation, First National Bank, Prescott, \$30,000.00, on November 1st, 1929, November—to the top of the page this notation. It is not my handwriting. I do not know whose handwriting this is in the notation at the

(Testimony of Archie C. Shreve.)

top of this page. It is not mine. It appears to be Mr. Cash's or Mr. Hobbs'. I do not recall furnishing anyone information in regard to the transactions, particularly that one No. 5, which says, "Transactions 1, 2, 3, 4 and 5, made by J. G. Cash prior to leaving Arizona office; information furnished by A. C. Shreve." [632] I would not know what transaction that refers to, unless I went through and checked it and looked at that entry in that book. According to the entry, it seems to be a transaction with the Arizona Holding Corporation, \$30,000.00, in the Security Building and Loan Association. I would not know that there was any connection between that check and the entry I have just pointed out on the books, being Government's Exhibit 96, check in the sum of \$30,000.00 with the perforated cancellation stamp of the bank as being paid November 9th, 1929. There may be but I would not say there was or was not. I would not assume that it did, because the date is not together, this entry in this Exhibit I testified about this morning, Defendants' B, November 1st, withdrawals, Thirty Thousand, Balance Two Hundred and Ten, and this Exhibit 96; I would not say it did or did not, but it don't appear to. That loan of the Overland Hotel and Investment Company may have been paid through the Sunset Building and Loan Association, being charged on the books of the Security Building and Loan Association, I would not know. I don't see how there could be any connection.

(Testimony of Archie C. Shreve.)

Q. And later on, wasn't that charged against the Sunset Building and Loan Association of \$30,000.00, or approximately that amount, being the same item included in the loans which have been referred to here on the Arrington and Dreyfus loans of \$66,000.00?

A. I don't see how there could be any connection between them. If there is, I would not know it.

Q. Well, the only cash that you remember of testifying to changing hands was the \$30,000.00 paid by the Security Building and Loan to the Overland Hotel and Investment Company, is that right—no, was the \$30,000.00 that was paid by the Security Building and Loan Association upon assignment of that mortgage by Mr. Millener? [633]

A. At the time I think the mortgage and notes was delivered to the Building and Loan Association and they credited the account of the Arizona Holding Corporation with it, with instructions to hold it all until the mortgage held by the Alianza Corporation was cleared, and to use the proceeds, or as much of the proceeds of that loan to clear that mortgage with as was necessary to, because this mortgage had become a first mortgage on that property. In other words, there was none of the funds to be used except at some time they cleared. That was the way it was handled. It was, in effect, in escrow, but I think they recorded the mortgage and made the trade.

The witness continuing: I think I testified this morning in regard to the payment of dividends, and

(Testimony of Archie C. Shreve.)

in that connection referred to a commission on a Steinfeld loan of \$2750.00. I believe that was a commission on a loan secured from the New York Life Insurance Company for Mr. Steinfeld's company at Tucson. The Fisher-Ingraham Company, of San Diego, negotiated the loan with the New York Life Insurance Company, and handled the details of the loan. The Building and Loan Association did not get the credit for the commission on that loan. Mr. Perkins was employed by the Arizona Holding Corporation and the Security Building and Loan Association and the Century Investment Trust during that time, on a commission basis, and during that time as an employee of those companies he had negotiated this loan in connection with the Fisher-Ingraham Company, and the agreement was that the Fisher-Ingraham Company was to take half of the commission and half of it was to go to the company. Mr. Perkins, not the company, had the agreement with Fisher-Ingraham. Mr. Perkins had the agreement that he was to get half of the commission. After we became associated with it those commissions were to go to the Arizona Holding [634] Corporation and the other companies. The commissions were all turned in except this one. Afterward there were several loans negotiated. This loan was negotiated after J. H. Shreve became associated with the Arizona Holding Corporation, nearly eight months after. The negotiations for that were prior to the time I became associated with the Arizona Holding

(Testimony of Archie C. Shreve.)

Corporation, but there was an awful lot of time spent on it in the summer of 1929. It might have been pending for eight months with the New York Life Insurance Company, but I rather doubt it. According to the records, Mr. Perkins went to Mr. Conner's office, an attorney in Tucson, and got that \$5500.00 check. It was payable to the Fisher-Ingraham Company, and he took it to the Consolidated National Bank, I believe, and got the bank to phone to San Diego, and they got the bookkeeper of the Fisher-Ingraham Company's office, and finally agreed that the check might be endorsed "Fisher-Ingraham Company, by Glen O. Perkins", and a Cashier's check sent to San Diego for their part of it. That was some time in December, 1929. It developed Mr. Perkins went to Kansas right after that. I don't know whether it was before he went away or when he came back that I had a conversation with him about those dividends and this commission. I did not testify this morning about our conversation at which J. H. Shreve was present, at which he loaned Perkins \$2500.00 to pay—no, after the \$2750.00 was not deposited in the company, as Mr. Perkins had led me to believe it was, and told me it was available, I wanted to know who was going to account for it, and we had quite a row about it, and in the row, I telephoned for J. H. to come over. He came over here and after considerable argument J. H. and Mr. Perkins made some kind of arrangements about it. I don't think I was present when

(Testimony of Archie C. Shreve.)

that money was supplied. I do not know in what form it was turned over to Mr. Perkins or the company. I do not know where it was deposited. I don't know that it was ever deposited. I am satisfied it was. I do not know how J. H. Shreve paid this over, whether he gave it to him in [635] a check for it. I know that it was straightened out. I don't think I said J. H. Shreve loaned Perkins \$2500.00 or \$2750.00. I said he arranged to straighten out the \$2750.00 item that was short. J. H. Shreve loaned or arranged to pay it some way or another. I know there was a credit for that amount of money. I don't know how he arranged it. He told me he arranged it. I checked and know the bookkeepers *that* got it straightened out, that is all I know about it. I don't know that I saw the entry in the book. I said J. H. Shreve loaned him that \$2750.00. He probably did loan him the money. I assume it was loaned. I have tried to tell you what I know about it and the facts about it, and I know the \$2750.00 belonged to the company, and I know after the row we had it was straightened out. Mr. Perkins had tried to make the claim that he got that commission and that it was his according to the arrangement and agreement he had with J. H. Shreve before they went into the Arizona Holding Corporation. I believe Mr. Cash was called into the thing, or some way or another, and everybody knew it. That has been eight or ten years ago. I know it got straightened out. Mr. Perkins did not make that statement or that claim at that time, that the com-

(Testimony of Archie C. Shreve.)

mission belonged to him. The first time I heard Mr. Perkins mention that agreement was when he testified in his own behalf at the trial of this case in Tucson. Mr. Perkins never made any such claim to me in the presence of J. H. Shreve that that \$2750.00 was his commission for negotiating this loan through the New York Life Insurance Company for Mr. Steinfeld, and that he was to keep it under the arrangements he had with J. H. Shreve at the time and before I or J. H. Shreve became interested in the Arizona Holding Corporation.

He never made any such statement except in the trial of this case at Tucson, when he was testifying in his own behalf. I never heard him making any such claim. I do not know where Mr. Perkins deposited this money when the Consolidated National Bank cashed this check. I was not interested in connection with the loan on [636] the property at Wellton. I didn't so understand that was a transaction in which the company was purporting to make a loan of some \$66,000.00. I understand that my brother made some kind of a trade for some property in Arizona, in the fall of 1930, and I believe there was an escrow created with the Sunset Building and Loan Association and I was asked to do certain things in connection with that escrow, among them was to see that the papers were in order and signed. I believe there was a mortgage and a small amount of money changed hands in the transaction. There was a piece of property in San Diego in-

(Testimony of Archie C. Shreve.)

volved in it. It apparently is the same transaction in which Mr. Arrington and Mrs. Dreyfus made some mortgages. My brother, Daniel H. Shreve, traded some property in San Diego. I don't know whether his name appeared in any of the papers in connection with the Arrington or Dreyfus loans, or the deeds, at that time. I do not remember the details of the loan when the property was deeded to Mrs. Dreyfus and Mr. Arrington. I was just called in to see if the papers were signed, to examine the title in order to see whether the title was good on this loan. Dan just asked me to see that the papers were signed, and I think there was a small mortgage involved in it, where there was some money to be provided. Whoever was to take over this property was assuming the mortgage. I think the mortgage was about all. It has been a long time. If I could see the escrow instructions and the whole transaction, I could give you the details of it.

Q. What papers had to be put in escrow? This property was deeded to Mr. Arrington and Mrs. Dreyfus, and they executed a mortgage on the property that was deeded to them, and the mortgage that had been on the property was paid off, what papers were put in escrow; that was the escrow part of it?

A. Well, I don't think any deal like that ordinarily is handled without each party getting a policy of title insurance, we call it in California.

(Testimony of Archie C. Shreve.)

Q. Did they get one in that case?

A. I am not sure, but I think so.

Q. Well, the deed and the mortgage were made at the same time, there wasn't any necessity for putting them in escrow; the property was deeded to Mr. Arrington and Mrs. Dreyfus, and they immediately executed the mortgage, there was no necessity for any escrow in that kind of a deal, was there?

A. I don't know that I understand you, Mr. Flynn, but if a transaction gets to a point, if you are going to actually make it, a real estate transaction, most of them I have ever dealt with was handled through an escrow. I have handled hundreds of them.

The witness continuing: I could not tell you, but I assume Government's Exhibit 135, which is a mortgage from Lyda Dreyfus to Theodore Castle, dated December 30th, 1930, and Exhibit 132, being a deed from L. P. Valentine and wife to Lyda Dreyfus, dated December 30th, 1930, and recorded according to exemplified copy, on January 5th, 1931, and the deed recorded on January 5th, 1931, were placed in escrow. I don't think I examined the title. If there was a policy of title insurance, if the escrow called for it, no doubt I examined that. In other words, if it didn't clear out properly, I would have been notified of it and ironed it out. I knew at that time Dan was interested in the Security Building and Loan Association. I haven't the slightest idea

(Testimony of Archie C. Shreve.)

that the Security Building and Loan Association or the Century Investment Trust were involved in this transaction. I didn't have any reason to ask them. In 1931, Hobbs and Perkins went to San Diego to have a conference with me in regard to the companies over here, just before the Building and Loan Association closed. Dan was over here at that time, I believe, and the companies were still [638] operating. A phone call or two passed and there was some discussion. According to my testimony this morning, I had been disconnected with these companies for something like a year and a half. I was employed by one of the different corporations I have mentioned here during all the time that I testified about, that is, in 1928, 1929, 1930, 1931 and 1932. I would not say I was employed by all of them at the same time but was employed by some one of those companies. There was a telephone conversation that the companies were having some difficulties over here at that time. I was not interested except in my brother's affairs. I was interested to the point of assisting him wherever I can. This company got into difficulty and I would go to his rescue. I did it then and would do it today. When those books were taken from my car by Mr. Evans and someone else, my office at that time, I believe, was 620 Commonwealth Building. I believe those books were taken there. I don't say I knew nothing about when Mr. Evans had my car and brought those books in there. I don't know anything about it; it just was

(Testimony of Archie C. Shreve.)

something that happened. Dan and Mr. Watt were there and it would be the logical place to bring the books.

Q. Those were the books of the Arizona Corporations, were they not?

A. If they were the books of the Century Investment Trust and the Arizona Holding Corporations, they were.

Q. Well, then, under the—were you familiar with the laws of Arizona in regard to the books of corporations?

A. I know many Arizona corporations that have their books out of the State.

The witness continuing: Mr. Wood came over there in connection with the books on two or three occasions or more. The [639] question arose, apparently some difficulty on them, and they asked me about that. I don't know, I was not paid for it, I just gave some legal advice maybe that I should not have given. That meeting in Wellton was early in 1932. That meeting was requested from this end of the line by Dan or someone else. He either wrote a letter or called. The meeting was arranged and we met there. I did not meet him to get some clothes to take back to San Diego. I had no idea of getting any clothes. We met there to talk about business. There was a big family of us, eleven, he was in difficulty over here, we wanted to see if we could help him, do anything we could to assist him, regardless of what it was.

(Testimony of Archie C. Shreve.)

Q. Mr. Shreve, I now call your attention to Government's Exhibit No. 207, this pamphlet. There is listed in this pamphlet some corporations: The Security Building and Loan Association of Phonix, the Security Building and Loan Association of Tucson, under the title "Allow me to recite herein some of the institutions which the Century Investment Trust owns entirely, others in which it owns control, and others in which it owns stock ownership." Now, the third is the First National Bank of Prescott, Arizona, and the Citizens State Bank of Phoenix, Arizona, the next, Arizona Holding Corporation of Tucson, Arizona, and the Sunset Building and Loan of San Diego, California. Was that correct; did the Century Investment Trust own some stock or part ownership or control of the Sunset Building and Loan Association?

A. That circular, as I told you—

Q. I am not asking you about the circular, I am asking you just a simple question, Mr. Shreve.

A. What is the date of the circular—what is the date you are talking about?

Q. Well, I will not confine it to any date, [640] any time during 1929, 1930 and 1931, did the Century Investment Trust own the stock or part ownership or controlling stock of the Sunset Building and Loan Association of San Diego?

A. It may have owned stock in all those corporations you named.

The witness continuing: It may have owned stock in all of those corporations, in the Commonwealth

(Testimony of Archie C. Shreve.)

Building Company at San Diego, and all those corporations you have named. It may and may not have owned stock in the Southwest Union Securities Corporation, I don't know from reading that circular. I know they owned the Security Building and Loan Association, and owned the stock of the Citizens State Bank; I do not know on what date, if ever, they owned stock in the First National Bank of Prescott. They may have owned that stock. I may have attended a directors meeting of the First National Bank of Prescott, or a stockholders meeting, in which the Century Investment Trust voted several hundred shares of stock. I would not know unless I could see the record, about the Commonwealth Building Company, owning any stock in that company. I know that circular was sent out without anybody's approval, knowledge or consent. You would have to show me the records of the Century Investment Trust for me to know whether at any time in 1929, 1930 or 1931, the Commonwealth Building Company owned any stock in the Century Investment Trust. I couldn't testify of my own knowledge unless I could see the record. My brother, Dan, made two or three trips or more before he made a deal to come over here and work in connection with the Security Building and Loan Association. I think Government's Exhibit 39, being the Articles of Incorporation of the Century Investment Trust, were copied from some other set. I have no independent recollection of the following provisions:

(Testimony of Archie C. Shreve.)

“The preferred stock shall be subject to redemption [641] in whole or in part, at any time, at \$32.00 per share and accumulated dividends thereon, at such time or times, and in such manner as the Board of Directors shall determine. The Series A preferred stock shall be subject to redemption at \$107.00 per share at any time, and from time to time, and in such manner as the Board of Directors shall determine, provided all of the outstanding preferred stock of this corporation shall have first been redeemed.”

The witness continuing: I presume these are the Articles I prepared, or helped to prepare. The three signatures of the incorporators are A. C. Shreve, Glen O. Perkins and V. Munter. That is the lady who testified here as a witness for the defense and who has been in the court room during this trial, Valeria Munter. I believe these were executed in Phoenix. Miss Munter's first name is Valeria Munter. She was over here in Phoenix at the time this company was organized and took part in the organization, at least by becoming one of the incorporators, with myself and Glen O. Perkins. I think Mr. Perkins asked her to come over here, to become one of the incorporators of this company that he wanted to have organized. Calling my attention to Government's Exhibit 41, being application in connection with the Century Investment Trust to the Arizona Corporation Commission, the minutes of the first meeting held October 22nd, 1931 at 117 North

(Testimony of Archie C. Shreve.)

Central Avenue, Phoenix, Arizona, attached, that was the office in the Adams Hotel Building. I was present at that meeting with Glen O. Perkins and Miss Munter.

Q. These minutes record, Mr. Shreve, that it is further resolved, until otherwise ordered, that providing for authorizing the Secretary to open bank accounts in certain banks, including the Commercial National Bank, the First National at Prescott, and the [642] Consolidated National Bank at Tucson, the First National Bank at San Diego, California, the California Savings and Commercial Bank at San Diego, the Western National Bank at Los Angeles, and the Boatman's National Bank at St. Louis, Missouri, "It is further resolved that until otherwise ordered, said banks be and hereby are authorized to make payments from the funds of this corporation on deposit with them upon and according to the check of this corporation signed by J. H. Shreve, A. C. Shreve, Glen O. Perkins, J. R. DeLatour and Meta Harrington, and checks bearing any two of the foregoing signatures shall be entitled to payment." That is the J. H. Shreve mentioned in there, he is your brother, the defendant in this case, isn't it?

A. It is.

The witness continuing: He was authorized to sign checks of the Century Investment Trust at the first meeting. The A. C. Shreve mentioned there is myself. Any two of those you named could

(Testimony of Archie C. Shreve.)

sign on the funds of the Century Investment Trust for deposit in any of these banks. I think it was correct that my brother and I could sign checks that would be honored by the bank, just two signatures under that authorization. According to that card of registration, I registered at that hotel November 16th, 1929. That is my signature on the card. The room might have been charged to me for the period of time from my registration to December 31st. I would not know unless I checked the record that I continued there under that registration until January 5th, 1930. I do not know that I retained that room under my registration until December 31st. The record skips from December 13th to December 28th, according to that card. I couldn't tell you whether I occupied that room during that period of time or not. [643] This room was registered, in the first place, by me, and it might have been occupied by myself or anyone else in connection with the business. According to that card I registered again on January 11th, and under that card I stayed there on January 11th, 12th, 15th and 17th. I would go and come, and, of course, sometimes I would register and sometimes I would not. I would not know unless I could go back and refresh my memory that I registered in again and under that registration retained that room to January 21st, with the exception of the 19th and 20th. That is my signature on that document but whether I occupied the room during that

(Testimony of Archie C. Shreve.)

period of time it would be impossible for me to say. The room might have been charged to me. That is my signature when I re-registered again on January 21st; I could not tell you how long I remained there. If that card is correct the room was charged to me up to January 26th. That is my signature on registration card on January 25th, which continued the 25th, 26th and 29th. As to how long I remained there, I would not know. As to registration card of January 29th, which continued until the 6th of February, or the 10th of February, I don't know whether I was there all that time and would have no way of knowing. I was in Phoenix often during that period. As to whether these cards are the correct dates when I was at the Adams Hotel, I have no way of telling. As to another registration on January 10th, which continued to the 15th and then jumps from the 15th to the 18th, the room was registered if their records show it, according to this record that is probably correct. The signature on it is mine. The registration on February 18th is my signature. I did not remain there from the 18th of January continuously to April 19th. I did not retain the room until the 19th of April. D. H. Shreve, if you will notice on the notation here, came in here. That is the first time I noticed it, on March 9th, I believe. There are two or three notations on the side here. I believe that is about the time that D. H. Shreve came here and he occupied the room with me [644] as long as I was here, and after I left, he

(Testimony of Archie C. Shreve.)

probably retained the room and left it registered in my name. I was not here during that period of time. The notation on the card shows that he was there. I have no way of knowing whether the room was retained in my name until April 19th. That registration slip on the top there has my signature on it, and I was no doubt there at that time, but I am positive I did not stay here through from that time until April. During the time I was in Phoenix, up until March, I was here in connection with the business of the Century Investment Trust and the Security Building and Loan Association, which had offices in the Adams Hotel Building.

Redirect Examination

That is my signature on the date of registration on the card, appearing on November 16th, 1929. I don't know what the notation is on the side there. About the time the office was opened several people came in and used my room. I might go away and leave the room in possession of someone else without a new registration. It was agreeable with Mr. Robbs, who was Manager of the hotel at that time, and certain people would use my room. That was true throughout my stay at the hotel in Phoenix. The names J. H. Shreve, H. P. Everett, Gale and W. C. Campbell, on the margin of those cards, indicate somebody else occupied the room in my place. I don't know those marks or memorandums and I wasn't there all the time because I was going and coming all the time. I went to Tucson often during

(Testimony of Archie C. Shreve.)

that period of time. I know I was in Tucson probably as much as I was in Phoenix from November until March. It was right in the middle of the season, and we just took occupancy of that hotel down there, and it required lots of attention. I could not say what Government's Exhibit 183 is but I know what it refers to. (Defendants' Exhibit E for identification.) It is not the record I made. All I can tell you is what I heard in the last trial. At the time the Security Building [645] and Loan Association was organized I did not have any personal knowledge of any deposit, security or bond which was filed with the State Treasurer of Arizona, but in the summer of 1929 I became familiar with the deposit with the State Treasurer. I went to the State Treasurer's office and found a deposit of the Security Building and Loan Association of \$50,000.00 in certificates of deposit. The law required that that deposit be maintained in the state during the time the Association was in operation, either in bonds, mortgages or satisfactory deposit to the State Treasurer, when approved by the Banking Department, I believe, and the State Treasurer. These certificates of deposit were originally deposited, and I believe drew four per cent interest. The time came to substitute mortgages, as was provided under the law, mortgages or bond, and in order to make the transfer and complete the substitution a bond was—I believe at first there was some mortgages put up and ten or twenty thousand dollars, I don't know

(Testimony of Archie C. Shreve.)

how much, and then a bond was put up in the sum of \$50,000.00, and the mortgages and the balance of the certificates on deposit were released, and after that mortgages in the amount of \$50,000.00 or more were deposited with the State Treasurer, approved by the Banking Department, and which remained during the life of the Association. It might have been changed from time to time. I have looked at the records and at the time the Security Building and Loan Association closed there was fifty odd thousand dollars worth of mortgages on deposit with the State Treasurer. It is my understanding that each transaction was approved, according to the records.

Recross Examination

Either the Superintendent of Banks or the State Treasurer approved those mortgages, I don't know which one. I believe the Superintendent of Banks approved them. I remember when the bond was deposited. The State Treasurer required the approval by the [646] Superintendent of Banks. Myself and someone else, Mr. Cash and Mr. Perkins, went to the State Treasurer's office. I am telling you what I did. I went in company with someone else and we went to deposit the bond, and at that time the State Treasurer required the approval of the Banking Department of that bond, and I believe the Banking Department, I don't know whether they submitted it to the Attorney General. I do not know what mortgages were on deposit at the time the Security Building and Loan Association closed. I do

(Testimony of Archie C. Shreve.)

not know whether or not the State Banking Department had demanded that other securities be placed there in lieu of the mortgages which were held. My understanding was they approved them as they accepted them. Those names in this column here (referring to hotel registration card) J. M. Shreve and Dale appears to be simply charges to the room; it tells you right there, "valet, miscellaneous, laundry, long distance and room." Probably had a suit pressed. I don't remember that the entries that follow after this name in the column here, "Dale", I don't know what it is, I would not know. This entry after J. M. Shreve in Item 4 on the 17th, is simply a transfer of charges by J. H. Shreve to this room. There was a Shreve got in the hotel from Pittsburg, at the same time I was there, and our accounts used to always get mixed. He would get half of our calls, and I would get half of his. There was a mix-up once or twice.

Redirect Examination

I heard the testimony in this case about the A. W. York loan. I don't know anything in the world about that loan. I never heard of it until it was testified to at the former trial in Tucson. Mr. Perkins' father-in-law, I believe, is the man who made the mortgage. I never heard of it until that time.

A. W. CRANE,

called as a witness on behalf of the Defendants, testified: [647]

I have previously testified in this case. I am a Certified Public Accountant, and have been for fifteen years, residing in Phoenix, Arizona. I am a qualified and licensed Certified Public Accountant under the laws of the State of Arizona. I am familiar with an association known as the Security Building and Loan Association, and had occasion to audit the books and records of that Association from the date of its inception up to and including November 14th, 1931, at the time the Association closed, and I made a subsequent audit for the Receiver, I think, after March 4th, 1934. I made the audit of the books and records of the Security Building and Loan Association from its inception to November 14th, 1931, at the direction of the Superior Court of Maricopa County, in the receivership proceedings. In making that audit I did investigate the transactions between the Security Building and Loan Association and the Arizona Holding Corporation. Those transactions are recorded on a ledger sheet, which is a part of a subsidiary ledger, I think it was called the savings account ledger, and the ledger sheet was number 115, as my records show. I have here a transcript of the ledger sheet that was made at the time, and that transcript was made during the progress of that audit in 1931. Defendants' Exhibit B are the ledger sheets relating to that account number 115. Those are the ledger sheets which

(Testimony of A. W. Crane.)

I audited in connection with the books of the Security Building and Loan Association. That was a running account between the transactions of the Security Building and Loan Association or the Arizona Holding Corporation. By a "running account" I mean an account reflecting all of the transactions between the Security Building and Loan Association and the Arizona Holding Corporation. This account, being number 115, is referred to in the books and records of the Security Building and Loan Association and in Defendants' Exhibit B I found a record of a loan to the Overland Hotel and Investment Company. I find that on September 23rd, 1929, the records reflect a credit to that account of \$32,750.00, [648] \$30,000.00 of which is the loan to the Overland Hotel and Investment Company, and on October 7th, a charge of \$9,000.00, which is a check in connection with that loan. That check for \$9,000.00 is dated October 7th, 1929. Defendants' Exhibit D is the check which I refer to in that account, and the date of that check is October 7th, 1929. The date appearing on account number 115 is October 7th, 1929, and the check was marked as a charge to that account number 115. The balance standing to the credit of Arizona Holding Corporation in this account number 115, on the books of the Security Building and Loan Association, on September 23rd, 1929, after this entry had been made, is \$37,250.00. The next entry is that check for \$9,000.00 on October 7th, which I have already

(Testimony of A. W. Crane.)

identified and testified about. The balance appearing in that account after this check had been charged against it is \$28,250.00. That appears from account number 115. There were two withdrawals from the credit of this account between October 7th and November 1st, 1929, one on October 18th for \$780.00, and one on the 19th for \$1,000.00. The balance in that account on November 1st, 1929, after those withdrawals had been made, is \$26,470.00. If a check or a part of it had been drawn against this account between October 8th and November 1st, 1929, in the sum of \$30,000.00, the account would have been overdrawn. My investigation develops that other funds were credited and debited to this account between the dates of September 23rd and November 1st, 1929, and intermingled with the \$30,000.00 credit on account of the Overland Hotel and Investment Company loan. Account No. 115 and Defendants' Exhibit D do not indicate that any check for \$30,000.00 was charged to the Arizona Holding Corporation account simultaneously with a credit for the same amount of \$30,000.00 on September 23rd, 1929, as testified to by Mr. Schroeder, the auditor for the Government and a witness for the Government in this case. The account itself shows that they do not. In auditing the books of the Security Building and Loan Association, I worked up [649] a profit and loss account of the operations of this company for the years 1929 and 1930. The books of the company show an operating loss for the year

(Testimony of A. W. Crane.)

1929 of \$187.15. That operating loss was charged on the books of the Security Building and Loan Association to the undivided surplus account. The books of this company show a loss of the Tucson branch of \$456.70 and an operating gain for the Phoenix part of the business of \$3,363.28, or a net gain for the entire operations of the concern of \$2,906.58, for the year ending December 31st, 1930. That net gain was transferred upon the books of the Security Building and Loan Association to the surplus account and undivided profits account. On December 31st, 1930, after making these charges and credits to the surplus and undivided profits account, the operating net earnings for the two years were \$2,719.43. There was an original credit to that account of \$5,000.00, which was the difference between the paid-in capital of \$45,000.00 and the \$50,000.00 which came into the company as a result of the capitalization, so that the surplus and undivided profits account at December 31st, 1930, showed \$7,719.43. The item appearing on Government's Exhibits 158 and 159, surplus and undivided profits \$7,719.43, which is a letter dated January 17th, 1931, addressed to Mr. Fred Sweetland by the Security Building and Loan Association, signed by John C. Hobbs as Vice-President, to which is attached a statement of the Security Building and Loan Association as of December 31st, 1930, is the item which I have testified about as reflected on the books and records of the Security Building and

(Testimony of A. W. Crane.)

Loan Association. That item so appearing from the audit of those books which I made. I do not know that I can understand the question as to that being a correct reflection of those items as appears upon that statement. It is the result of the operation, plus the \$5,000.00 which I have testified to as appears from the audit which I made of the Security Building and Loan Association. I did hear the testimony of Mr. Fierstone, the auditor for the Government and a witness in [650] this case. I heard the testimony of Mr. Fierstone to the effect that during the period of December 31st, 1930, certain items of expense in connection with the operation of the Security Building and Loan Association were paid or absorbed by the Century Investment Trust.

Q. Is it in accordance with the accepted accounting principles for a holding company to absorb a charge to the cost of this investment in a subsidiary corporate company, proportions of the expense of the operation of a subsidiary?

Mr. Flynn: Object to that on the ground it is invading the province of the jury and calling for a conclusion and opinion.

Mr. Hardy: He is an expert, your Honor, and I asked him about the accepted practice of accounting.

The Court: Oh, well, let the jury determine that.

Mr. Hardy: Exception, please. With respect to this character of accounting as between a holding company and its subsidiary, can you state, as a Certified Public Accountant, whether that manner of

(Testimony of A. W. Crane.)

accounting between the holding company and a subsidiary is approved by the Internal Revenue Bureau of the United States Government?

Mr. Flynn: Object to that on the ground it is immaterial and that it does not tend to prove or disprove any of the issues in this case, and calling for a conclusion and opinion of the witness and invading the province of the jury.

The Court: Sustained.

Mr. Hardy: Exception. [651]

The witness continuing: I have stated that I did examine the books and records of the Security Building and Loan Association which came into the possession of the Receiver on November 16th, 1931. I made that audit at the direction of the Superior Court of Maricopa County. I have examined the books and records of the Security Building and Loan Association which are now in evidence in this case. I have examined the records that were in possession of Ben Dodt, Receiver of the Security Building and Loan Association, that pertained to transactions up to and including November 14th, 1931, which are not in evidence in this case. A correct audit could not be made of the books of the Security Building and Loan Association from the books and records only that are here in evidence in this case. A complete audit of a transaction passing through the accounts of the Century Investment Trust or the Arizona Holding Corporation and the books of the Security Building and Loan Association could not be made

(Testimony of A. W. Crane.)

from the books and records that are in evidence in this case, without referring to the books and records that are not in evidence in this case.

Cross Examination

In arriving at the amount in the surplus and profits account of \$7,719.43, as of December 1st, 1930, included in that account is \$5,000.00 set up as capital surplus at the time of the organization of the company. That item of \$5,000.00 is paid-in or capital surplus. There is no way it can be considered as earned surplus or earned profits. That is a part of the money that was paid into the company by the original subscribers of stock. It is a part of the original capital structure that was paid in at the time. In auditing the books of the Security Building and Loan Association I examined all the books and records here in evidence of that company, in arriving at the total surplus. I found in those books, charged as Phoenix expenses for the year [652] 1929, interest on pass-book certificates, \$57.62; printing and stationery \$93.50; sundry supplies and expenses, \$62.35; total expenses of \$213.47 for 1929. for 1930, salaries, officers, \$595.00; employees, \$160.00; commissions, \$12.00; audit \$159.15; rent, \$400.00; advertising and publicity, \$2,704.25; licenses and taxes, \$32.46; interest on full paid coupon certificates, \$984.23; interest on pass-book certificates, \$3,897.83; interest on fully paid non-coupon certificates, \$414.29; interest on notes payable, \$10.16; legal fees, \$350.00; printing and stationery, \$1,-

(Testimony of A. W. Crane.)

294.03; telephone and telegrams, \$498.46; sundry supplies and expenses, \$1,178.52; new account expenses, \$256.34; bonds and insurance, \$721.60; postage, \$126.20; title expense, \$35.00; donations, \$126.00; dues and subscriptions, \$6.00; travel, \$25.50; auto expenses, \$171.47; cash shortage, \$21.34; total for the year 1930 of \$14,179.83. I would call all those operating expenses. This all went into my audit in figuring and arriving at this final profit. In my investigation and examination, I did find that some of the expenses of the Security Building and Loan Association had been paid by the Century Investment Trust. In 1929, \$1,536.65 was absorbed by the Century Investment Trust. In 1930, new account expense, \$1,517.94 was absorbed by the Century Investment Trust, and rent of \$2,197.50 was absorbed by that company, a total of approximately \$5,200.00, all told for the year 1930. There were entries in the books of the Security Building and Loan Association showing that Century Investment Trust had absorbed or paid a part of the expenses in the operation of the business. These three items that I testified to were charged to the Century Investment Trust. I examined the books of the Century Investment Trust. These items are shown in the books of the Security Building and Loan Association charged to the Century Investment Trust. It may or may not be that Century Investment Trust had paid these. They could have been charged to their account. They had a running account with the

(Testimony of A. W. Crane.)

Security Building and Loan Association, and it [653] was charged into that account. Those last figures I read did not go into my audit in arriving at this surplus and profit as of December 31st, 1930. If it had been included in there, there would not have been a loss for that. There would still have been a surplus and undivided accounts left. They would still have about \$2,600.00 in the undivided and surplus account. But in order to arrive at that amount, I would have still included the \$5,000.00 that started in the account. As far as the operating profit was concerned, I would have none. In other words, if I didn't include the \$5,000.00, there would be a loss in place of a profit in that account. That is if these items that were absorbed by the Century Investment Trust had been charged in there. Government's Exhibit 96, hasn't a date, and I found this draft in the books of the Security Building and Loan Association if it was there. It shows by the perforation that it was paid October 9th, 1929. That may be or may not be the same item of \$30,000.00 that is charged to this account 115, which is Defendants' Exhibit B, on November 1st, 1929. That thing doesn't show any date on it. I would have to go through the records to find out. I could trace this \$30,000.00 to see what account it was connected with or where it appears in the books of the Security Building and Loan Association, except it is a charge of \$30,000.00 as of November 1st, on the books of the Security Building and Loan Association against

(Testimony of A. W. Crane.)

the Arizona Holding Company. In the examination and audit of the books I did also examine the minute books and the correspondence in order to get the supporting data for my entries and the entries in the books, but not quite exhaustive. In my examination, in trying to trace this \$30,000.00 draft, I don't remember seeing where it belonged in the account of the company. I did not see this letter or retain copy of such letter in the files of the Security Building and Loan Association. I may have and I may not. The correspondence was very voluminous and I could not remember all of the letters that I saw. I could not tell you now just where [654] or how I traced this draft of \$30,000.00 or connected it with any entry in the books of the company, but it does show that it was paid on October 9th, 1929. It does not show the date it was issued. This letter of September 25th, 1929, which is Government's Exhibit 124, does refer to a check of \$30,000.00 on the First National Bank. The draft there answers the description of the check referred to in this letter, with this exception; it talks about a check there and this is a draft, this is a sight draft, and they say there, "We are handing you herewith our check * * *". It may be the same thing. Referring to Government's Exhibit B, which is account number 115, the \$9,000.00 item is entered as of October 7th, 1929. The loan is set up on September 23rd, 1929, for \$32,750.00. The other three items in this account, beginning with September 5th, 1929, \$4,500.00 and

(Testimony of A. W. Crane.)

\$500.00 are credit items. The only other items of credit in this account between September 5th and November 1st, 1929, exactly equal this \$9,000.00 check issued on October 7th. The check for \$9,000.00 was made on October 7th, and the last \$4,500.00 was not put in there until November 1st. This check was paid on October 9th. It was paid after the first item of \$4,500.00 was deposited and prior to the last item of \$4,500.00. I did check the entry here of \$32,750.00 credit to see where that was deposited. Of course, that banking account is one thing and the Arizona Holding Corporation account is another, and I don't know as I could particularly identify that in the bank account. I presume I could. I don't remember now as to that. That would be a part of the complete audit in verifying these accounts and would be a proper audit to check the bank account to see what became of these funds and where they were carried. All of the bank accounts were checked. [655]

Mr. Hardy: Your Honor, we object to that, for the reason that the testimony of the Government with respect to this account is based upon the books and records here in this court and not upon the bank accounts which are not here in evidence.

The Court: Well, he said he made an audit. Now, let's find out what the audit is. Go ahead.

Mr. Hardy: Exception please.

The Witness: That entry there may be a bank account credit, it may be just a bookkeeping credit, for all I know, at the present time. As far as that Arizona Holding Company account is concerned—

(Testimony of A. W. Crane.)

The witness continuing: A "bookkeeping credit" is a credit to the account without any money.

Q. Well, how about the withdrawal of \$30,000.00 down there, would that be the same; would that be a mere bookkeeping withdrawal too?

A. It may be or it may be that \$30,000.00 you showed me there.

Q. I see, and you can't now then, from the audit made and the information you can give me, now state what investigation you made to verify this credit of \$32,750.00, or a withdrawal of \$30,000.00, to say whether it was just a bookkeeping credit charge or whether there was an actual transfer of that much money.

A. No, Mr. Flynn. I could not take one item out of, maybe, thousands, and tell you what that particular item is now without going into the books.

[656]

The witness continuing: This is the particular item or account that I have been working on to testify here in court. Since this case started and since I have been working on this account, which is Defendants' Exhibit B, account 115, I have not gone back into my work papers on my audit to check and see what verification I made between those two items. I would like to say further, that there was numerous records in connection with the accounts that are not here or available to me. When I testified on direct examination that a complete audit could not be made from those books in evidence, I

(Testimony of A. W. Crane.)

meant by that that the items could not be verified by the original sources of information or the original memorandum and corresponding papers in evidence.

Q. No, that are not in evidence. When you stated on direct examination that a complete audit could not be made of these companies from the books in evidence here, you mean by that that the items could not be verified back to the different memorandums and original items of information, is that what you mean?

A. If they were not here, you mean? Well, I don't understand the question.

The witness continuing: By a complete audit I mean an audit of the entries appearing upon the records of a company or a partnership, whatever it may be, and a verification of them by other information outside of the books and original entries or from other methods of original entries. If I were making a complete audit of the company I would verify their cash account and the bank records also, which may not be their permanent records except as entered in their cash book or cash disbursements. I verify those items with the bank accounts, and that is what I mean by a complete audit. In arriving at a balance or profit and loss statement as was done in this case, it could or could not be [657] done by the books in evidence, because I have not got the cancelled checks here. As far as the profit and loss figures are concerned, I could take these books and arrive at the same figure you arrived at here. The

(Testimony of A. W. Crane.)

item on Government's Exhibit 78, which is numbered in the left-hand corner 16, and under date of January 2nd, 1930, headed "Pass-book Account, Profit and Loss, \$1,513.65", refers to the item of the same amount that I testified to had been charged to the Century Investment Trust. That was the loss for the year 1929 that had been absorbed by the Century Investment Trust and was charged to the Century Investment Trust and therefore was not included as a loss in the profit and loss statement which is Government's Exhibit 160. Their own books show that they did lose that much and that they charged it to the pass book account of Century Investment Trust. Referring to the operating expenses for 1930, the item of salaries of employees or officers, \$595.00. I cannot tell what items went to make that up; what salaries they were. I believe they would be itemized in the books to show what particular salaries they were, along with the expense accounts in the general ledger. It is in the general ledger under "Salaries", other officers, \$85.00 a month for May, June, July, August, September and October and November. It states that L. Fricke received all of that and that is the only item which is charged for office salaries for the year 1930.

Whereupon, the Defendants closed their case and rested. [658]

The Government thereupon called

GLEN O. PERKINS

as a witness in rebuttal, who testified as follows:

Direct Examination

I have testified before in this case. After I was working in Phoenix in connection with the Security Building and Loan Association and Century Investment Trust, I received a commission in connection with a loan made to Mr. Steinfeld, of Tucson, by the New York Life Insurance Company, some time before Christmas of 1929. I received a check from Harold Steinfeld for \$5500.00, made out to the Fisher-Ingraham Company. I cashed that check at the Consolidated Bank at Tucson. I endorsed the check in the name of the payee on the check. I had Mr. Biddell at the bank draw a Cashier's check for one-half of it, payable to the Fisher-Ingraham Company, and the other half was deposited in my account in the Consolidated Bank. Prior to that time I had been associated with the Fisher-Ingraham Company in San Diego. I had done work in connection with that Association on this loan from the New York Life Insurance Company to Mr. Steinfeld before I came to Phoenix. At the time I came to Phoenix to work here, I did have a conversation with both of the defendants, in San Diego, in reference to that loan and a possible commission that might come out of it. No one was present but the two defendants and myself. I don't know how long prior to the opening of the Phoenix office. It was a few weeks prior to that time.

(Testimony of Glen O. Perkins.)

Q. What was said at that time with regard to this loan or this possible commission?

Mr. Hardy: Your Honor, now we object to these conversations, what was said between Mr. Perkins and these defendants in San Diego. We think they are not admissible for the reason they are irrelevant, incompetent and immaterial.

The Court: He may answer. [659]

Mr. Hardy: Exception.

The witness continuing: It was at the time I had been called to San Diego and told that the office in Phoenix was to be opened, and my salary was discussed at that time. I brought up at that time my association with the Fisher-Ingraham Company and the making of that loan in Arizona, and the commitment had been made on the part of the New York Life Insurance Company at that time but the money had not been advanced by the New York Life Insurance Company, therefore, the commission was not paid, and I brought up the matter of this loan and said I wanted an understanding, and it was agreed, that I was to receive those commissions upon any loans that I had in the making at that time. After I went on a salary the Company was to get the commissions. After I received this commission, I did not turn over or deliver to the Security Building and Loan Association any amount of money whatever as commission received in connection with that loan. I kept that and that of the Century Investment Trust.

(Testimony of Glen O. Perkins.)

Cross Examination

I testified in my own defense in the former trial of this case in Tucson, and at that time testified in regard to this Harold Steinfeld-New York Life Insurance Company loan.

Q. In response to a question put to you by Mr. Alex Murray, who was then your counsel in that trial, in regard to this loan, did you not, at that time, so testify—"I had a connection with the Fisher-Ingraham Investment Company at San Diego. I had previously worked for Mr. Fisher and Mr. Ingraham, and they were personal friends of mine. I had helped him negotiate a loan with the New York Life Insurance Company on a piece of property in San Diego. I came over here and they told me if [660] there was any good business property in Tucson that would justify the New York Life Insurance Company making any loan on it, that I would get the application and they would get the loan through, and they would divide the profits, or split them." Now, they had that transaction with you with regard to making the loans in Arizona, according to your testimony, before you came to Tucson, did they not?

A. You mean loans in general?

Q. As you testified here in the last trial?

A. Yes.

The witness continuing: I think I had that discussion in regard to making loans for the New York Life Insurance Company with the Fisher-Ingraham

(Testimony of Glen O. Perkins.)

Company in San Diego before I came to Tucson. That is what I testified to. I did not state this morning that I negotiated this loan before I left San Diego. I negotiated the loan during the summer but it was never consummated and I never got my commission until after I came to Phoenix. It takes a long time to get those loans through. I was working on a commission for the Security Building and Loan Association and the Arizona Holding Corporation at the time I negotiated this loan. I was not then employed by the Fisher-Ingraham Company. I never said I was employed by them. I had worked for the Fisher-Ingraham Company in San Diego in the negotiation of loans before I came to Arizona, in the Sam Fox Building, in San Diego. At the time I negotiated that loan for Harold Steinfeld with the New York Life Insurance Company, the Century Investment Trust had not been organized. I was connected with the Arizona Holding Corporation, which Mr. Hobbs and I organized, and connected with the Security Building and Loan Association. I had no other employment, other than negotiating these loans.

Q. Well, Mr. Perkins, did you ever represent [661] to any stockholders of the Arizona Holding Corporation or any prospective purchasers of that stock, that you were and would—those companies were and would negotiate—that company had and would negotiate loans through the New York Life Insurance Company?

(Testimony of Glen O. Perkins.)

Mr. Flynn: We object to that on the ground it is not proper cross examination.

The Court: He may answer the question.

The Witness: After I came to Phoenix, I went on a salary, yes.

The witness continuing: Conner and Jones, attorneys at law, at Tucson, handled the matter for the New York Life Insurance Company. They never asked me to testify to that before. Harold Steinfeld handed me his personal check for \$5500.00, payable to the order of the Fisher-Ingraham Company, and not payable to me. I had them and Mr. Biddell, who was connected with the Consolidated National Bank at Tucson, secure the consent of the Fisher-Ingraham Company, over the telephone, to place its endorsement upon that check and one-half of it was delivered to me and I deposited that amount in my own personal account and utilized it myself. After I obtained that \$2750.00 I came back to Phoenix first and then went to Kansas. I don't remember how soon I went to Kansas, just a few days after I got this money. It may have been the next day, I don't know. I stayed in Kansas about ten days and I got back to Arizona about ten days after I left. I don't remember whether or not I came back before January first of that year. After I came back I had a conversation with Archie Shreve in regard to that commission. Archie said to me, "Did you get your commission on the Steinfeld loan?" I said, "Yes." That is not all that was said. He said, "You had

(Testimony of Glen O. Perkins.)

better turn it in here”, and laughed. I said, “You know whose money that was, don’t you?” That is all that was said. He told me I had better turn the money in, or words to [662] that effect. He was joking with me that I should pay the money over to him, not personally, to the Company. I didn’t consider that he made a formal request of me to turn that money over to the Company. I had no difficulty about that. That was all that was ever said about it. With different emphasis possibly I might have stated at the former trial of this case at Tucson that, “A certain time when I got back, Archie Shreve asked me, he said that he had understood that I collected on the Steinfeld loan. I told him I had. Well, he told me I had better turn the money over to the Company.”

Whereupon, both the Government and the Defendants rested. Counsel for the Defendants then resubmitted the motion for a directed verdict, which was denied by the Court, and the Defendants excepted.

Whereupon, counsel for the respective parties argued the case to the jury, and at the close of the arguments, the Court charged the jury. The entire charge of the Court is as follows:

The Court: It now becomes the Court’s duty, gentlemen, to instruct you as to the law that applies to this case. These instructions, of necessity here,

are somewhat long, and I will ask you to bear with me patiently and give the best attention you can, for I believe they will be of material assistance to you in your deliberations.

To begin with, there is no higher duty to which a man can be called, which more absolutely demands that he not allow the slightest feeling or sentiment to affect the workings of his mind than when he is charged to help decide whether the law of his country has been violated by a fellow citizen or fellow citizens. [663] That is the reason why the law requires every juror to take a solemn obligation that he will discharge his duties without fear or favor. This is an obligation higher than, and destructive of any fraternal, social or other tie which may exist between any juror and anyone otherwise interested in the case, as party, counsel or officer of the Court.

Honest and self-respecting jurors do not need such an oath to secure the proper discharge of their duties. It is administered to you only because the law requires it to be done. Jurors who do respect themselves and their responsibilities, do and should object to efforts which appear to them to be deliberate, to get their minds off of a true consideration of the case, by appeals to their emotions, feelings, likes and dislikes, and sympathies. And intelligent jurors, who are honest and determined to do their full duty in their high office, for yours, although but temporary, is a very high office, will not allow themselves to be worked off of the track of proper con-

sideration of what is evidence on the point in issue, and to use as helpful arguments based upon collateral matters which, often, especially in a prolonged trial, creep into the case, and which are sometimes unduly dwelt upon with no other office than to divert the minds of jurors from the real and substantial things. Jurors, in the proper discharge of their duties, should permit none of these things to take their minds off of the issues presented to them, but should, without bias or prejudice either for or against the respective parties interested herein, weigh the evidence and give thereto such consideration as they honestly think the same is entitled, and render their verdict in accordance therewith. The jury system is the [664] fairest and best institution ever devised to settle questions of fact. When it works in the right way, its results are right; when it goes wrong, it is because, for some reason, too often, because of something wrongly thrown into its machinery, it works the wrong way.

Now, gentlemen, the defendants in this case, Jesse H. Shreve, Archie C. Shreve, are charged by each of the first eleven counts of the indictment with violations of Section 215 of the Penal Code, which makes it a crime to use the United States mails in furtherance of a scheme to defraud, or to obtain money or property by means of false or fraudulent pretenses, representations or promises. The twelfth count of the indictment charges the defendants with a conspiracy to violate said section. This count has been dismissed and you will disregard it. The stat-

ute upon which the first eleven counts of the indictment are based, as the same is here applicable, reads as follows:

“Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations or promises * * *, shall, for the purpose of executing such scheme or artifice or attempting so to do, place or cause to be placed any letter, post card, package, writing, circular, pamphlet or advertisement whether addressed to any person residing within or outside of the United States, in any post office, or station thereof, or street or other letter box of the United States, or authorized depository for mail matter, to be sent or delivered by the post office establishment of the United States, or shall take or receive any such [665] therefrom, whether mailed within or without the United States, or shall knowingly cause to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such letter, postal card, package, writing, circular, pamphlet and advertisement” shall be punished as provided in said act.

Now, gentlemen, this act of Congress, from which I have just quoted to you, provides in general, as you have noticed, that whoever having devised an artifice or scheme to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations and promises, uses, or

causes to be used, the postal facilities of the United States to help work out the scheme, shall be deemed guilty of an offense against the United States.

You will notice, gentlemen, that it is no offense against the United States merely to engage in a fraudulent transaction. That, unless it directly affects the Government, would be an offense only against the state in which the transaction occurred. But if, to assist the scheme, the party uses the United States mails, he confronts a possible prosecution by your general government. So here, there is no prosecution for a fraud, but for the use of the mails to assist an alleged fraud, or attempt to defraud. It is no concern of the United States how many frauds are committed in this state, or in any other state not connected with the use of the United States mails, because the Constitution of the United States does not give Congress the right to interfere in such matters. It leaves the exercise of that right entirely with the state, but Congress has adopted a method which, at least, affects it in some [666] measure, and this by medium of this law relating to the mails. Over the United States mails, the Government has, of course, full control, and has the right to see that they shall not be used as an instrument to further any scheme to defraud. It does not punish the fraud; it punishes a party for using the mails to defraud. The policy of the United States is to prevent a misuse of the mails of the United States in furtherance of a dishonest scheme. The government intends that the post office establishment shall be

used by the people for the purpose of legitimate business and social intercourse, and that it shall not be used for the purpose of furthering dishonest schemes or practices.

Section 215 of the United States Penal Code, from which I have just quoted, includes every plan, scheme or artifice to defraud by representations as to the past, or present, or suggestions or promises as to the future. The statute was enacted with the purpose of protecting the public against all intentional efforts to despoil, and to prevent the post office establishment from being used to carry such effort to despoil into effect. So that where there has been devised a scheme to defraud, or to obtain money or property by means of false or fraudulent pretenses, representations or promises, and a letter has been mailed in furtherance of or for the purpose of carrying the scheme into effect, the offense defined by the statute has been committed.

Now, gentlemen, the word "scheme" and "artifice" as used in the statute includes any plan or course of action intentionally devised for the purpose of deceiving and tricking others, and thus fraudulently obtaining their money or property.

[667]

Now, you should understand, gentlemen, and I think it is especially important in this case, you should understand that the terms of the act are such that fraud attempted in the execution of a plan or scheme whose aims are worthy is within its provisions. That is to say, that if one in charge of a

legitimate business conceives a plan to promote it by fraudulent acts, and then, to help the fraudulent conception, he uses the mails, he becomes liable, no matter whether the object for which the fraudulent act is done is good nor whether the intention is to benefit in the end the man deceived.

For illustration, if I had a plan which I honestly believed will greatly benefit any one who comes into it, and to induce one to come into the expected and hoped for benefits with his money for investment, I deliberately make a false statement calculated to influence his action, I am liable if I use the mails in connection therewith. The act is drawn upon the theory which you certainly hold to that he who is asked to part with his money or property is entitled to know the truth about the business he is invited into. The aim of the law is to keep the government agency out of partnership with dishonest people,—to keep our mail service pure; to see that it is not used as an instrumentality in bringing about a dishonest transaction.

Now, gentlemen, this trial follows the finding of a Grand Jury of this Court of a bill of indictment against the defendants herein, filed in this Court on December 22nd, 1933. The office of an indictment is to formulate the charge, and to limit the frontiers of an investigation by a trial jury. It is, therefore, nothing but the vehicle by which the issues it sets forth come [668] upon the trial docket of this court. It follows that not in the slightest degree does it function as evidence when, as here, a trial is had

upon it. Consequently, you will not give the slightest weight to the fact that the issues of fact, which you are called upon to determine, have been in some measure, considered by the Grand Jury. To no extent whatever, does any averment in the indictment suggest the fact of which it speaks, or the guilt of any defendant on trial, and you should ignore it entirely as effective for such office. It does not create even a suspicion of guilt as to any defendant who has denied it by his plea of "not guilty".

There has been some argument before you, gentlemen, by counsel, directing your attention to the recitals of this indictment, and it may be that some question has been raised in your mind as to the truth of the indictment, or the sufficiency thereof. Now, you are instructed, gentlemen, that the sufficiency or insufficiency of the indictment is a question of law to be determined solely by the Court. The Court has already passed on the question, and has held that the same is sufficient and states a public offense or crime against the law of the United States under said Section 215 of the Federal Criminal Code, and therefore, in your consideration of the guilt or innocence of the defendants, or any thereof, the question of the sufficiency or insufficiency of the indictment, or of the recitals of the same, should not in any manner be considered by you in your deliberations and in arriving at your verdict.

Now, gentlemen, each of the defendants charged in this indictment started into the trial of this case protected by a presumption that he was, in fact,

innocent of each charge set forth in the indictment. The [669] law presumes that the acts of all men have been rightfully and properly and honestly performed, and that the acts shown by evidence to have been performed by the defendants were performed properly and honestly, and pursuant to honest and proper motives, unless the contrary is established to your satisfaction beyond a reasonable doubt. That presumption of innocence has an important influence in this case, because by it the weight of the evidence against each defendant must be tested. Only when you find the evidence strong enough to overcome this presumption, does it cease to protect the defendant involved from an adverse verdict on any count. The presumption of innocence has the effect of evidence for acquittal, and as it is weakened by testimony towards conviction, it still is an effective foundation for a reasonable doubt, unless its effect is at last destroyed, to a reasonable certainty, by your final conclusion upon all of the evidence in the case.

This presumption of innocence performs its full office, until the jury finds the evidence which establishes each material allegation of the indictment to be convincing beyond a reasonable doubt. Then, and then only, does it cease to operate.

Now, gentlemen, the term "reasonable doubt", which will occur frequently throughout the remainder of these instructions, is a difficult term to define beyond its own language. Because the qualification "reasonable" is used, it is plain that the law

contemplates that there might be something in the mind of the juror which might take the form of a doubt, which, yet, he could not say was a reasonable doubt. Under our policy a verdict of "guilty" in a criminal case cannot be rendered without convincing evidence. The law is [670] too humane to permit a conviction so long as a rational doubt remains in the mind of any juror.

A juror is required to consider a reasonable doubt of guilt as existing with him as long as his mind is fairly and reasonably able to reconcile, with the theory of innocence, the material facts without which guilt cannot be established. Here, then, is the first question: May the facts accepted as established by the evidence, as these facts are put in their proper places, respecting each other, and as they group themselves reasonably together to tell the story to which they give light, may these facts so related, be fairly reconciled with the presumption of innocence of the crime charged? If the answer to this question is "yes", then you entertain a reasonable doubt.

We know, gentlemen, in human affairs, absolute certainty is not always attainable. In the very nature of things, reasonable certainty must be accepted as sufficient to determine us to important judgments, such as are involved in a case of this character. Therefore, when a full and candid consideration of the evidence produces a conviction of guilt, and satisfies the mind to a reasonable certainty, a mere captious, ingenious, vague or arti-

ficial doubt is of no avail. A reluctance to do a disagreeable thing, to perform a duty which may involve a fellow citizen in trouble, never can be called a reasonable doubt.

You must look, therefore, to all of the evidence, and if that, fully considered, satisfies your minds to a reasonable certainty, of the guilt of the defendants, or either thereof, you must without hesitation say so by your verdict. If you are not so satisfied, or find only that there are strong probabilities of guilt, your only [671] safe course is to acquit.

Each defendant in this case, gentlemen, is entitled to the individual opinion of every juror, and no jurors should vote for the conviction of any defendant as long as he entertains a reasonable doubt of such defendant's guilt, notwithstanding the opinions of others on the jury. You note, gentlemen, that a juror qualifies himself to make up his judgment only after he has given fair, full, impartial and candid consideration of the facts in evidence. This means that he should bring to bear upon the question, not only all his powers of mind, but that he should freely and fairly consider the views of his fellows. A criminal case is not submitted to jurors as individuals. No one juror is legally competent to decide it adversely to any defendant on trial. It is submitted to the jury as a deliberative body, whose judgments are worthy only when they are produced by the contributions to a right solution of each member. Each juror, therefore, should not only attempt to think out a solution for himself, but he should

allow his fellows to assist his thinking. Even though having arrived at an opinion, he should consider with an open mind the diverse opinions of others. He should test his conclusions by the views of his fellows and be ready not only to give his own advice, but also to listen to the advice of others. In theory, at least gentlemen, a hung jury is seldom possible if every juror gives the same degree of fair and candid and coolheaded consideration to the case. This is so, because the processes of reasoning and common sense are fairly uniform with men of average ability and reasonableness; and to such who are only competent for jury service, facts speak with much the same force. It [672] is seen that the doctrine of reasonable doubt, therefore, is not a bug-a-boo, not a convenient excuse to avoid doing something unpleasant; not a cover for stubbornness, but simply a call to candid and fairminded men to be careful and not decide until they are convinced of the guilt of the individual, as charged, to a reasonable certainty. When you are convinced to a reasonable certainty, not an absolute certainty, but to a reasonable certainty, you are convinced beyond a reasonable doubt. The terms are convertible.

As Jurors, you apply to the work before you the same method of reasoning and the same standard of comparison of the weight of facts clearly established in the evidence as you would apply under equivalent conditions to a problem before you for solution in private life. In both situations, your plain common sense, the education your experience

and observations have brought you, are available with just the same degree of usefulness. Nothing results from your oath requiring you to reason differently or change your mature method of reasoning from the course you would pursue in your private affairs in determining a serious question. The only effect of your official position as jurors is to face you with an obligation to calmly and seriously study the evidence, to ascertain the clear existence of fundamental facts asserted to have been shown in the evidence and to correlate them properly into a line of proof so that, as jurors, you are able to say that the ultimate fact of the guilt charged against any defendant is shown to a reasonable certainty, whereas, if it were a private matter, you might be satisfied with a solution which is supported by a mere preponderance of evidence.

Now, gentlemen, the indictment in this case has [673] been read to you. You have had various portions of the indictment pointed out to you and discussed by counsel for both the Government and the defendants. It is lengthy and it will serve no useful purpose to reread the same now. You will take the indictment to your jury room with you when you retire to consider your verdict in this case. Briefly, I will point out to you some of the features of the indictment which have already been referred to.

Two separate schemes or artifices for obtaining money or property by means of false promises, representations and pretenses are charged in the indictment. The scheme set forth in counts one, two and

three consists of the alleged operations of the defendants in control of the Security Building and Loan Association, in furtherance of which the letters and writings specified in said counts, are alleged to have been sent through the Post Office Department of the United States. The scheme set forth in counts four, five, six, seven, eight, nine, ten and eleven consists of the alleged operations of the defendants in control of, or by means of the Century Investment Trust and the Arizona Holding Corporation, in furtherance of which the letters and writings specified in said counts are alleged to have been sent through the United States mails.

The scheme or device for obtaining money by means of false pretenses, representations and promises alleged in counts one, two and three of the indictment is that the defendants would organize and obtain control of the Security Building and Loan Association, an Arizona corporation, to engage in the business of receiving deposits of money from persons who might be induced to deposit money with said association, issuing pass books [674] and investment certificates therefor, contracting to pay interest thereon and disposing of such money as defendants might determine; that for the purpose of obtaining said money and inducing such deposits from such persons with the association, pretenses, representations and promises, alleged to be false and untrue and known by defendants to be false and untrue would be and were made by defendants as follows:

That the money of such depositors would be safely and profitably invested by depositing the same with said association and receiving its so-called pass books and investment certificates therefor; that all money deposited with the association would be protected and secured against loss by the guaranteed capital of said association, and by first mortgages on Arizona real estate; that said association would pay six per cent per annum interest on all money deposited with the association; that any and all money deposited with the association could be withdrawn, in whole or in part, at any time by the depositors thereof; that all money deposited with the association would be safely and profitably invested; that all money deposited with the association would be invested in sound first mortgages on improved real estate, carefully selected; that three hundred thousand dollars of the capital stock of said association had been paid in. That in furtherance of such scheme, the letters, papers and writings specified in said counts one, two and three of the indictment are alleged to have been sent by the defendants through the United States mail.

The scheme or device for obtaining money by means of false pretenses and representations alleged in counts four, five, six, seven, eight, nine, ten and [675] eleven of the indictment is that the defendants would organize and obtain control of an Arizona corporation to be known as the Century Investment Trust, to have a capital stock of one million shares, and would obtain control of an Arizona cor-

poration already organized, known as the Arizona Holding Corporation; that said defendants would cause the Century Investment Trust to issue large amounts of its stock to the defendants and to the said Arizona Holding Corporation, and would cause said Century Investment Trust to retain some of its stock in its treasury; that the defendants would sell and dispose of and would cause said corporations to sell and dispose of large amounts of said stock to persons who might be induced to purchase and pay for the same; that defendants would invite and solicit such persons to purchase said stock from said defendants and from said corporations and to pay for the same in money and property, and that for the purpose of obtaining such money and property in exchange for such stock, pretenses, representations and promises alleged to be false and untrue, and known by defendants to be false and untrue would be and were made by the defendants, as follows:

That said Century Investment Trust was in a solvent condition financially; that said Century Investment Trust had done and was doing a large and profitable business; that said Century Investment Trust had and would have net earnings and net income out of which dividends could and would be paid to its stockholders; that dividends paid by said Century Investment Trust to its stockholders had been and were paid out of the net earnings and net income from said Century Investment Trust.

That in furtherance of said scheme as set forth in counts four to eleven inclusive, the letters, [676]

papers and statements alleged in said counts are alleged to have been sent by the defendants through the United States mails.

Now, gentlemen, false pretenses, representations and promises, in order to come within the statute, must have been made knowing them to be false, or made with reckless disregard as to whether they were false or true. If the statements, promises and representations were made by the defendants, or either of them, in the belief that they were true, that belief would be a complete defense as to the one entertaining the same, however inaccurate the statements may turn out to be, unless the statements and representations were made with reckless disregard of their truth or falsity. The real question in the case; the substantial question of the case in each count of the indictment is whether or not the defendants in what they did were acting in good faith. If they were acting in good faith, or if you have a reasonable doubt as to whether or not they were acting in good faith, then they are entitled to a verdict of acquittal, because if they were acting in good faith, there could be no scheme on their part to defraud, and the use of the mails in a scheme such as they may have had, if there was no intent to defraud, would not be such a scheme as is comprehended by law, and would not be a scheme for which use of the mails, you could find them guilty.

To constitute the offense charged in each of the first eleven counts of the indictment, three things are necessary:

First: That the defendants, or one or more of them, devised the scheme therein described;

Second: That said scheme was one to obtain money or property by means of false or fraudulent [677] pretenses, representations, or promises;

Third: That the defendants, or one or more of them, for the purpose of executing said scheme, placed or caused to be placed in the post office, within the District of Arizona, to be sent and delivered by said post office establishment, the letters or writings in said count described.

If the Government has failed to make a substantial case beyond a reasonable doubt of schemes or a scheme to obtain money or property by means of false pretenses, representations or promises within the lines of the indictment descriptions of the alleged schemes or scheme, you must acquit all of the defendants, or as to any defendant against *when* such failure is present, notwithstanding any fraudulent conduct which you might perhaps find that the Government has proven against such defendant but not within some of the allegations of the indictment.

Fraudulent practices, if any, which must be established by evidence beyond a reasonable doubt to sustain conviction of any defendant, are only those or some of those specified in the indictment, but, when it comes to the question whether the scheme was intentionally fraudulent, or whether any defendant intentionally participated in the proven fraudulent scheme or schemes within the terms of the indictment, you may look to other transactions, if any in

evidence, not alleged but of a substantially similar nature to those alleged and proven for the purpose only of assisting you to determine whether any defendant shown to have been a party to such proceedings, was actuated by a fraudulent purpose in either doing the things which may have been alleged and proven against him to indicate an act within [678] a fraudulent scheme as charged, or with knowledge of such scheme such defendant intentionally continued to assist it.

Now, gentlemen, the Government is not required to make proof of every allegation of the scheme or schemes of the alleged false and fraudulent practices thereof. It need not prove that the scheme was fraudulent in its inception, nor that any defendant entered upon the execution of the enterprise, did so with a present intention to participate in the alleged fraudulent schemes or practices, nor that each of the several enterprises in which the defendants were engaged was fraudulently planned or conducted or participated in by any defendant. As to each of the two schemes alleged, it must, however, show by proof convincing you beyond a reasonable doubt that as to one or more of the separate lines of activities in which one or more of the defendants participated, there did come into activity a scheme or schemes to obtain money or property by means of false pretenses, representations and promises of the character denounced in the indictment.

On the question of the birth of the alleged schemes, all the Government need to prove is that

that happened when fraud of the character denounced by the indictment was first consciously and intentionally practiced by one or more of the parties charged therewith. If it may have been only a development consciously brought into action out of a scheme in its origin legitimate and honestly intentioned, proof of that fact, convincing beyond a reasonable doubt would be sufficient, and if you are convinced beyond a reasonable doubt that these defendants, or either of them, were at any of the times a party to a scheme to defraud, as charged in the [679] indictment, a withdrawal from such scheme could not be effected by intent alone. There must have been some affirmative action on the part of the defendants to effect such withdrawal.

On the question of the alleged scheme or schemes to obtain money or property by means of false or fraudulent pretenses, representations and promises entered into as to any of the several lines of activity alluded to, the Government needs to prove, not all of its allegations, but enough to satisfy your judgment against the presumption of innocence and beyond a reasonable doubt, that one or more of the substantial practices alluded to and specified in the indictment as fraudulent as to any or all of the defendants, was consciously and intentionally employed. In other words, as to both the character of the schemes and the method of execution, the Government need not prove all it says. The requirement is that it must prove enough of its specifications to show beyond a reasonable doubt some scheme to obtain money or

property by means of false pretenses, representations and promises within the broad lines of its charges, and of substantially the same character. Even if you find beyond a reasonable doubt, but one of the specified and substantial false pretenses or misrepresentations to have been proven substantially as charged as to one or both of said schemes and to have been put forth intentionally to mislead prospective investors and to induce confidence in their operations, the Government makes this part of its case, relative to the charged scheme.

Nor is the Government required to prove its specifications in any instance in exactly the terms of its charge, nor to the full extent of the specification, [680] provided therein was made a substantial misstatement or false representation. Whatever proof exists in the evidence which collectively shows beyond a reasonable doubt, by reasonable import, that an alleged inducing false pretense or misrepresentation was put forth meets the Government's obligation to make full proof thereof, even if that proof depends on clear inferences only, from things material thereto shown, to a reasonable certainty to have been said or done, such inference pointing to a reasonable certainty, that there was an intentional design to produce a false impression, of the tenor of the Government's assertion.

Now, we go to this length on the foregoing subjects, because of any argument advanced that the Government has abandoned its indictment in proof and attempts to convict on a charge substantially

different from that formulated by the Grand Jury. You, gentlemen, take all of the law of this case from the Court only, and it is the law of this case that the Government has offered testimony, whatever its weight, which only you are competent to decide, which tends to support its charge of a fraudulent scheme as laid by it, although it may not have met every detail of that charge, which it need not do.

Indictments are frequently drawn before all of the facts develop, and especially in a case of this kind, matters are alleged, the status of which is modified by proof. It is often necessary and justifiable to charge broadly, wherefore, the question always is whether enough has been proven within the lines of the charge, and not whether all has been proven nor whether any substantial part or specification has been proven exactly as charged. [681]

Nor is it necessary for the Government to prove that the schemes attributed to the defendants affected or was intended to affect, all or even many of those persons who were secured as investors. It is sufficient if it shows that a scheme or schemes of the character charged and entered into by defendants or some of them, was put in operation intentionally to defraud some of the persons sought as investors. It is not even necessary that any person whatever was actually defrauded.

It is the putting into attempted execution of the alleged scheme to obtain money or property by means of false or fraudulent pretenses, representations and promises that is important. It is of no

consequence at all, even, that any person became a victim of the scheme. The indictment does not even charge that any one was actually defrauded, and there was no reason why it should so charge. The fact that only a few persons who had had business dealings with the defendants were brought on the stand as witnesses is of no significance. The Government was under no obligation whatever to bring before you any deceived investor. The testimony of those who testified claiming to have made investments in the companies specified, was competent, not to prove an unalleged charge or successful fraud, but to bring into the record competent testimony respecting the circumstances of their several contacts with the defendants upon the question of the character of the alleged schemes, and the attempt to execute them.

It must be shown beyond a reasonable doubt as to each count, that the letter therein described was actually sent through the mails, in the interest and furtherance of the scheme or schemes charged; that it [682] was mailed in the District of Arizona by some one, defendant or employee, authorized to put it in the mails. It is not necessary to show that any defendant actually deposited the letter, if the circumstances in evidence tend to show that it was done at the direction or by the authority of the defendants. It is not necessary that the letter or writing in any instance indicate on its face any fraud, or that it was anything else than an every day and innocent communication. But either by its terms or by ex-

trinsic testimony, it must be shown beyond a reasonable doubt to have been intended to be a transaction to further some feature of the fraudulent scheme, in furtherance of which the letter is alleged to have been mailed.

The official post mark of the post office appearing on the letters or envelopes containing the same set up in the indictment, and which have been introduced in evidence is *prima facie* proof that said letters were mailed at the point or post office so appearing on said post mark.

Such letters must have been mailed in furtherance of a scheme already devised and in existence or operation at the time of such mailing.

The gist of the offense, gentlemen, under Section 215 of the Penal Code, that is, an essential element of it, is the prosecution of a fraudulent purpose towards the execution or fulfillment of which the mail is used. One man may devise and accomplish it with, or without, assistance, but all who, with criminal intent, join themselves even slightly, to the principal schemer or schemers, are subject to the statute, although they may know only their own share in the aggregate wrong doing. The law is that whoever directly [683] commits any act constituting an offense defined by any law of the United States, or aids, abets, counsels, commands, induces or procures its commission, is a principal. So that whoever knowingly aids, abets, counsels, commands, induces or procures the doing of any act constituting a violation of the statute involved, is just as guilty as the principal schemer or schemers.

Where two or more persons jointly devise and execute a scheme to obtain money or property by means of false and fraudulent pretenses, representations or promises by the use of the mails, they thereby become in effect partners in the criminal purpose of so using the mails to defraud. If they do, the acts of each thereafter during the existence and execution of the scheme to obtain money or property by false and fraudulent promises, representations and pretenses, become the acts of all of the partners and each may be convicted of the mailing of a letter which one of his partners caused to be mailed in the execution of the scheme or artifice.

A letter in furtherance of a scheme to defraud means nothing more than a letter written for the purpose of carrying out the scheme. If, upon examination of these indictment letters, you should find any which indicated that it was not for the purpose of carrying into effect the scheme alleged by the Government, or if you have a reasonable doubt of any such purpose, then the defendants would be entitled to an acquittal so far as the count charging the mailing of such letter is concerned, even if you should find all other facts in favor of the Government.

Each defendant has the right to have you, and [684] it is your duty to consider the evidence with respect to him and determine whether or not he was a participant in the alleged scheme or artifice to obtain money by false pretences, representations or promises. In determining the question as

to whether any particular defendant participated in those alleged fraudulent schemes, or either thereof, if you find that there were such, you can only take into consideration the statements, actions and conduct of the particular defendant, and his own connection with the actions of the others, as shown by the evidence, independent of any statement or declarations by other parties to the criminal partnership, and unless you find from such evidence beyond a reasonable doubt that he was a party to the fraudulent scheme or artifice, if there were or was such, then it would be your duty to find him not guilty, and it is only after you find from such evidence independent of any statement or declaration by others that he was a party to the scheme, and while he was a party to it, that the statements and declarations or conduct of other parties to the criminal partnership may be considered as if made by him.

You must keep in mind, gentlemen, at all times that the burden is not upon any defendant to show that he was not a party to the scheme, or that he did not know its character, but the burden is upon the Government to prove beyond a reasonable doubt that he was a party to the scheme, and that evidence which is as consistent with innocence as with guilt is insufficient to sustain a conviction.

You are, however, instructed that if the evidence relating to any circumstance in this case is, in view of all the record made, reasonably susceptible to [685] two interpretations, one of which would point

to a defendant's guilt, and the other of which, admit of his innocence, then it is your duty to consider such evidence, and adopt that interpretation which would admit of such defendant's innocence and reject that which would point to his guilt.

Now, the Court instructs you, gentlemen, that if you believe from the evidence in this case beyond a reasonable doubt that a scheme or schemes to obtain money or property by means of false or fraudulent pretenses, representations or promises as charged in counts one to eleven inclusive in the indictment, then in such a case you may take into consideration any acts or declarations you may find from the evidence to have been done or made by any co-schemer in furtherance of the common purpose during the existence of such scheme, but you should not take into consideration in this case acts or declarations of any of the defendants herein not done or made during the existence of such scheme. Any acts done or statements made by any defendant after such scheme or schemes had terminated, if you find from the evidence that the same had existed, or not made or done during the existence of such scheme or schemes, then such acts and statements could only be considered by you as against the defendant performing such acts or making such statements, and not against the other defendants named, unless such other defendant or defendants assented to or ratified such acts or statements so made.

You are instructed, gentlemen, that the schemes and artifices alleged in the first eleven counts of the indictment herein to have been devised by the defendants are schemes and artifices which are [686] alleged to have been devised by the defendants prior to the dates on which the several letters, statements and writings set out in the indictment were alleged to have been placed and caused to have been placed in the United States Post Office, or caused to be delivered by mail and by the Post Office Establishment of the United States. The latest date upon which any of the several letters, statements, or writings, set out in the indictment are alleged in the indictment to have been placed and caused to have been placed in the United States Office, or caused to have been delivered by mail and by the Post Office Establishment of the United States is October 24, 1931. I instruct you that all of the evidence received in this case of facts and circumstances which occurred subsequent to said date can only be considered by you as to the said first eleven counts of the indictment for the purpose of determining the intent of the defendants.

Under the mail fraud statute, said Section 215 of the Criminal Code, there need not be an intent to use the mails. If any person or persons plan a method of obtaining money or property by means of false pretenses, promises and representations, he might not even have intended to use the mails at all, but during the course of the plan, he, or any one under his direction, uses the mails to carry out

his fraudulent enterprise, he becomes guilty of violating this statute, which is the mail fraud statute.

Now, gentlemen, under the laws of Arizona, building and loan associations are defined to be corporations, societies, organizations or associations having for their object the accumulation by the members of their money by periodical payments into the treasury [687] thereof, to be invested from time to time in loans to members upon real estate for home purposes. Said laws provide that such associations shall only loan its money secured by a note and first mortgage on improved real estate, or upon real estate to be improved under contract with the association, and said loans shall not exceed sixty per cent of the conservative market value of the improved real estate. No mortgage loan shall be made except upon the report in writing of three appraisers, members of such association, which report shall state the conservative value of the property to be mortgaged. Every borrower is required at the time of procuring a loan to subscribe for an equal amount of stock in the association, which, together with its accumulations, shall be held as further security for said loan. The directors, in their discretion, may also loan upon the security of the shares in the association to the amount of ninety per cent of their withdrawal value, and may loan upon or invest an amount not greater than twenty per cent of the total assets of the association in government, and municipal bonds. The treasurer and secretary of such association, before entering upon their

duties are required to give good and sufficient bonds for the faithful performance of the same, and for the safe keeping of all money or property coming into their hands, to be approved by the board of directors. Such bonds shall be increased or additional securities required by the board when the same become necessary to protect the interest of the association or its members, but no director shall be accepted as a surety on such bond, and the directors shall be individually liable for loss to the association or members caused by the failure to comply with the provisions of this section. [688]

Before the Superintendent of Banks shall issue a permit to do business to such association, he must require that such association deposit with the State Treasurer of Arizona territorial refunding bonds, bonds of the State of Arizona or interest-bearing valid bonds of the counties, cities, municipalities or school districts of the state, or interest-bearing promissory notes secured by first mortgages upon improved real estate within the State of Arizona to the total amount and sum of \$50,000, to be held in trust for the benefit of the stockholders of the association, provided that in lieu of the deposit of the securities above mentioned, or any of them which such association may be required to deposit with the State Treasurer, a bond may be deposited to said amount of \$50,000 of any reliable surety company authorized to do business within the state.

Now, gentlemen, the mere failure to comply with the statutory requirements for building and loan

associations under the laws of Arizona for the benefit of the stockholders of the association, or otherwise, or the violation of such laws does not constitute a fraudulent scheme as charged in the indictment, or any evidence thereof.

If, however, a bond or securities of the character and in the amount required by law be withdrawn, and in lieu thereof securities other than in compliance with the statute, or in an amount less than that specified by the statute and of doubtful, if of any value, be deposited with the State Treasurer whereby the benefit and protection afforded stockholders by the requirements of the law are lost or greatly impaired, and if with knowledge of such substitution of securities [689] not in compliance with the building and loan association laws, and of the loss or impairment of the benefits afforded under the provisions of the statute to stockholders and others, the defendants or either thereof represented to investors or depositors of said association for inducing the investments or deposits of such persons, that said association had complied with the law, and that the money of such investors or depositors was fully protected under the laws of Arizona, such representations, if so made, would be fraudulent, and it is immaterial whether or not the Superintendent of Banks or the State Treasurer, or those on whom the responsibility of passing on such securities devolved, approved the substitution of such securities or overlooked the fact that they were not of the character or in the amount as required by law, or inadequate or of little value.

You are instructed, gentlemen, that the mere fact that the Arizona Holding Corporation was the sole owner of every share of a stock of the Security Building and Loan Association does not of itself constitute a wrong. If you find that any of the defendants who were officers and directors in the Arizona Holding Corporation and managing and controlling its affairs, caused said corporation to purchase or otherwise acquire the shares of stock of the Security Building and Loan Association, that fact alone shall not be sufficient to find it wrongful.

The evidence in this case, gentlemen, shows that the Century Investment Trust, one of the corporations named in the indictment paid certain dividends to some of its stockholders. The Government claims that these dividends so paid were represented by the [690] defendant to be paid out of earnings of the corporation, and that they were not, in fact, earned by the corporation, and the Government claims that these dividends were not justified and were paid for the purpose of inducing investors to believe that the corporation was prosperous, and was earning money, and were, in fact, paid out of capital of the corporation and not out of earnings.

Dividends may be paid out of earned surplus. The actual appreciation in value of the total assets of a corporation may be credited to surplus, and may be a source out of which dividends may be paid. If the entries made by the defendants upon the books of the company were justified by the values of the properties behind the stock regarding

which the entries were made, or if the defendants actually and honestly believed that these entries represented the increased value of the stock, they would be justified in making the entries, and declaring and paying dividends in accordance with such entries.

It is for you to determine on the evidence in the case whether or not they were proper entries, and justified by the increased value of the property behind the stock regarding which the entries were made, or whether or not any dividends were paid out of earned surplus or net earnings of the company.

The capital of a corporation is the amount of money or its equivalent in property paid into the corporation for stock in the corporation, including the amount originally subscribed for stock, whether fully paid or not.

The term "dividend" as applied to corporation stock or shares may be defined as that portion of the [691] profits or surplus funds of a corporation which has been actually set apart by a valid act of the corporation for distribution among its stockholders.

The term "net profits" or "surplus profits" may be defined as what remains after deducting from the present value of all the assets of a corporation, the amount of all liabilities, including capital stock.

With the exception of dividends in liquidation, dividends can be declared and paid out of net profits only, or conversely stated, when the payment thereof does not impair the capital stock of the corporation.

Regulation 74 of the United States Internal Revenue Department, provides as follows:

“That a holding company which guarantees dividends at a specified rate on the stock of a subsidiary corporation for the purpose of securing new capital for the subsidiary and increasing the value of its stock holdings in the subsidiary may not deduct amounts paid in carrying out this guaranty in computing its net income, but such payments may be added to the cost of its stock in the subsidiary.”

That regulation of the Treasury Department may be considered by you with all the other evidence in the case in determining the character of the entries, if any, appearing in either of the books in evidence.

Now, gentlemen, the mere fact that one or more of the defendants were officers of the corporations specified in the indictment, or either thereof, does not alone charge such defendant or defendants with knowledge of the entries in the books and records of such corporation or corporations.

To charge such defendant or defendants with [692] responsibility for such entries you must find from the evidence beyond a reasonable doubt that such defendant or defendants made said entries, or had personal knowledge of the making of the same, or that said entries were made at his or their direction, or under his or their supervision, or that said entries were made by or under the supervision or at the direction of one or more of the defendants in furtherance of the schemes as charged in the indictment during the existence of such schemes, and that

the defendant or defendants to be charged with knowledge of said enterprise were copartners in said scheme or schemes, at the time that such entries were made.

It is common knowledge that most business enterprises and security offerings are aided by advertisements in the newspapers, circulars and other printed matter passing through the mails, and, at every hand, we see claims of earnings, returns and results which we know cannot be fully substantiated. Parties who have anything to sell have the habit of puffing their wares, and we are all familiar with the fact that it is a very prevalent thing in the course of business to exaggerate the merits of goods and other property people have to sell, and within any proper reasonable bounds such a practice is not criminal. It must amount to a substantial and wilful deception before it can be considered criminal.

The intent to defraud in this case, like the intent to defraud in any similar criminal case, is a question of fact and not a question of law, and as such question of fact must be found by the jury to be proved by all of the evidence in the case beyond a reasonable doubt and to a moral certainty to justify the jury in finding the defendants or either of them guilty. [693]

Now, gentlemen, there is one thing that you must keep in mind during your deliberations, and that is that under our system of law, men are not punished for mere mistakes, mere mismanagement, mere care-

lessness, or mere errors of judgment or careless bookkeeping. They are punished only for intentional wrong-doing, therefore, no matter how unsound, how impracticable or how visionary a scheme may be, if there is no intention to defraud or to obtain money by false pretenses, representations or promises, there is no such scheme as is denounced by the law.

On the other hand, no matter how sound or how practical a scheme may be, if it is the intention of those devising it or executing it to obtain money by false representations, false pretenses or false promises, it is such a scheme as the statute contemplates, so that the question of intent is a vital question in this case.

From what the Court has said in the frequent use of the words "consciously" and "intentionally" or both, it must be seen that in a case of this sort, one cannot be convicted unless it is shown beyond a reasonable doubt that he intended, by the acts proven against him, either to directly work a fraud through his performance of them, or intended to assist other defendants in the same end.

We have in this a large question, one of the dominant issues of fact upon which each defendant is entitled to and should receive independent and individual consideration, namely, the state of mind in which either he joined whatever is proven as fraudulent schemes within the terms of the indictment, or continued in such connection as the charged fraudulent character of the scheme [694] developed, or performed some act attributed to him for fraud

and deceit. Therefore, because it is so important to these defendants, we ask you, still considering your duty to society and the Government that brings this case to trial, to consider in the interests of the separate defendants, this particular question of intent.

With respect to the question of fraudulent intent, it may be said that its existence or non-existence is to be determined by you from all the facts and circumstances admitted in evidence, and your practice and experience and daily observation of the intents and acts of men will materially aid you in determining this matter of intent. The intent with which a given act is done, is more clearly and conclusively shown by the act itself, or by a series of acts, or by the circumstances under which the acts are committed, than by any words of explanation of the actor. In many cases, the actions of men speak their intentions more clearly and truthfully than their words.

The intent or the intention with which acts are committed is manifested by the circumstances connected with the transaction and the sound mind and discretion of the accused. The intent with which an act is committed being but a mental state of the party accused, direct proof of it is not required nor, indeed, can it ordinarily be so shown; but it is generally derived from and established by all of the facts and circumstances attending the doing of the acts complained of, as disclosed by the evidence. In order for you to determine the question of intent,

you will look to all of the evidence in the case, oral and documentary, and to all of the facts and circumstances in connection therewith.

Now, gentlemen, the collapse of securities and [695] of financial institutions of the country in 1929, and the depression following thereon is a matter of common knowledge. The business and financial conditions encountered by the defendants, or either of them, and said companies in their operations and enterprises during the period specified, may be considered by you with all the other evidence in the case in determining the good faith of the defendants in the transactions in which they were engaged at the time. The shrinkage of their securities, as well as others throughout the country may have left them in desperate straits. No such circumstances, however, justified a wilful violation of the law. If the representations of the defendants, or either thereof of the condition of their companies at the times referred to, of their sound condition and safety were believed to be true by the defendants, and were made in good faith, the element of fraud was not present, and the defendants should not be convicted. If you find, however, beyond a reasonable doubt that the representations made by the defendants, or either thereof, were false and untrue, and were known by the defendants to be false and untrue at the time of making the same, and were made by the defendants, or either thereof for the purpose of inducing depositors to invest, or continue to invest their money therein, such rep-

resentations and pretenses were none the less unlawful, notwithstanding any embarrassment to them or to others occasioned by the collapse mentioned, or the depression that has since followed thereon.

It is not necessary, gentlemen, to prove that these offenses were committed at the exact times specified in the indictment. It is immaterial at what time the schemes were entered into providing you find there were such. I say, it was immaterial to show what time [696] the schemes were entered into, providing that the letter or letters were mailed pursuant to such scheme or schemes, and within three years before the filing of the indictment. The offense must have been proven to have been committed within the District of Arizona. As to counts one to eleven inclusive, it must be proven that the letters were mailed in the District of Arizona. If such have been proven to have been committed within the State of Arizona, I charge you, as a matter of law, that they have been committed within the District of Arizona. The District of Arizona embraces the entire State of Arizona.

You are instructed that, where a conviction for a criminal offense is sought upon circumstantial evidence, the prosecution must not only show by evidence beyond a reasonable doubt that the alleged facts and circumstances are true, but they must be such facts and circumstances as are absolutely incompatible, upon any reasonable hypothesis, with the innocence of the accused, and incapable of explanation upon any reasonable hypothesis, other than

that of the guilt of the accused, before a verdict of guilty can be found.

In this class of cases the jury must be satisfied, beyond a reasonable doubt, that the offense charged has been committed by some one of the defendants in the manner and form as charged in the indictment, and then they must not only be satisfied that all the circumstances proved are consistent with the defendant having committed the act, but they must also be satisfied that the facts are such as to be inconsistent with any other rational conclusion than that such defendant is the guilty person before a verdict of guilty can be found. It is your first duty to determine from the evidence what facts and circumstances are thereby established, and then to [697] draw from such facts and circumstances, after carefully examining and weighing them, your conclusions as to the guilt or innocence of such defendant. It is your duty to exercise great care and caution in drawing conclusions from proved facts. Such conclusions must be fair and natural and not forced and artificial. Unless all facts and circumstances taken together are of such a conclusive nature as to establish, beyond a reasonable doubt, that the accused is guilty as charged, then he must be acquitted. It is not sufficient that conclusions create a probability of guilt, though a strong one, and if, therefore, assuming all the facts to be true which the evidence tends to establish, they may not yet be accounted for upon any hypothesis which does not include the guilt of the accused, the proof fails.

It is essential, therefore, that the circumstances, taken as a whole, and giving them their reasonable and just weight, and no more, should, to a moral certainty, exclude every other hypothesis. If, then, all the facts and circumstances established by the evidence beyond a reasonable doubt can be reconciled with any reasonable hypothesis of any defendant's innocence, then it is your duty to acquit such defendant.

You are further instructed that where one of the defendants in the case on trial testifies on behalf of the Government, as a witness against the other defendants, or some of them, the Government, by placing him on the witness stand and interrogating him in support of the indictment, vouches for his truth and veracity.

Now, gentlemen, I charge you that you are made by the law, the sole judges of the facts in this case, and of the credibility of each and all of the witnesses who have appeared before you, and of the weight you will give to the testimony of the several witnesses who have [698] testified in the case. In determining the credibility of any witness and the weight you will give to his or her testimony, you have the right to take into consideration his or her manner while giving his or her testimony; his or her means of knowledge; any interest or motive he or she may have, if any be shown, and the probability or improbability of the truth of his or her statements, when considered in connection with the other evidence in the case.

If you believe that any witness has wilfully sworn falsely to any material fact in the case, then you have the right to wholly disregard the testimony of such witness, except insofar as his or her statements may be corroborated by other credible evidence in the case, or by the facts and circumstances in evidence.

Expert auditors and accountants have been called by both the Government and the defendants, and have testified here in this case. Now, gentlemen, the opinions of those having special knowledge, training and experience in their profession or avocation are entitled to due consideration in subjects and matters on which such experts are so qualified, and you should consider the same in connection with all the other evidence in the case. Such opinions are to be intelligently examined by you in the light of your own general knowledge. In short, the ultimate weight to be given to the testimony of experts is a question to be determined *or* by your judgment.

During the taking of testimony in this case, witnesses were called to the stand who were engaged in the enterprises of one or more of the corporations named in the indictment. An accomplice is defined to be one concerned with others in the commission of a crime, and in this case, all persons connected with the operations [699] of the various transactions mentioned in the indictment and evidence, no matter how remote, are technically accomplices. It is the settled rule in this country that even accomplices in the commission of a crime are competent wit-

nesses, and that the Government has the right to use them as such. It is the duty of the Court to admit their testimony, and that of the jury to consider it. Unlike the provisions of the laws of this state, that a conviction cannot be had on the uncorroborated testimony of an accomplice, that rule does not prevail in the Federal Court. Such conviction may be had on the uncorroborated testimony of an accomplice. The testimony of an accomplice, however, is always to be received with caution and weighed and scrutinized with great care, and the jury should not rely on it unsupported for a conviction unless it produces in the mind of the jury a positive conviction of its truth. If it does, the jury may act upon it; if it does not, they should not.

Now, gentlemen, in the trial of all indictments, informations, complaints and other proceedings against persons charged with the commission of crimes, in the United States Courts, the person so charged, at his own request but not otherwise, be a competent witness. And his failure to make such request shall not create any presumption against him. The fact that a defendant has not testified in his own behalf is not to be considered or construed in any way against him, and you are not at liberty to indulge in any presumption of guilt or any unfavorable presumption or inference because he has not testified in his own behalf.

You, gentlemen, are not responsible for any punishment which may be given to the defendants, or [700] either of them, if convicted, and you should

not consider that in your deliberations. The knowledge of the penalty imposed by law on criminals are matters that are not properly brought before a jury. Human punishment is not inflicted in a spirit of revenge. Its object is not to inflict pain or suffering as an act of retaliation merely, but the guilty are punished that the innocent may be protected. It is the example to those who may contemplate crime that they will suffer the same punishment. In other words, your sole duty in this case is to decide whether the defendants, or either of them, are guilty or not guilty of any or all of the offenses with which they are charged. The question of punishment is left wholly to the Court, except as the law circumscribes its power.

You should not consider as evidence any statement of counsel made during the trial, unless such statement is made as an admission or stipulation conceding the existence of a fact or facts, or unless such statement is borne out by the evidence produced before you.

You must not consider for any purpose any evidence offered and rejected, or which has been stricken out by the court; such evidence is to be treated as though you had never heard it. You are to decide this case solely upon the evidence that has been introduced before you, and the inferences which you may deduce therefrom, and such presumptions as the law may deduce therefrom as stated in these instructions, and upon the law as given you herein.

Now, I think, gentlemen, that during this trial, I have made no comment on the facts and expressed no opinion in regard thereto. If I have, or if you think [701] I have, it is your duty to disregard that opinion entirely, except in so far as it may accord with your judgment, because the responsibility for the determination of the facts in this case rests upon you and you alone.

As has been stated, gentlemen, the defendants herein are charged by the first eleven counts of the indictment with having devised, or intending to devise a scheme or artifice for obtaining money or property by means of false or fraudulent pretenses, representations or promises, and of using the United States mails in furtherance thereof.

If, after a careful consideration of all the evidence in the case, and the instructions of the Court, you are satisfied beyond a reasonable doubt that the defendants or either of them, did commit any or all of the acts set forth in the first eleven counts of the indictment, you would, by your verdict, find that defendant of whose guilt you are satisfied beyond a reasonable doubt, guilty of such act or acts, and so state in your verdict. Unless you are so satisfied of the guilt of the defendants, or either of them beyond a reasonable doubt, as to the first eleven counts of the indictment, you would by your verdict find such defendant of whose guilt you are not satisfied beyond a reasonable doubt, not guilty. In other words, as to the first eleven counts of the indictment, you can find both of the defendants

guilty of all of the acts therein set forth, or not guilty as to all of the acts so set forth, or you can find one or more of the defendants guilty of all or any of the acts in the indictment set forth, or not guilty of all or any of said acts. [702]

Upon the conclusion of the charge to the jury, the Court announced that the instructions requested by the Defendants had been marked each separately and signed by the Court either "Refused", "Given", or "Not given because covered", and that such instructions as thus marked would be filed with the Clerk. The Court further announced that each of the Defendants' requested instructions had been marked as follows: Number 1 was refused; number 2 refused; number 3 refused because covered; number 4 was refused; number 5 was refused because covered; number 6 refused because covered; number 7 refused; number 8 refused; number 9 refused; number 10 refused; number 11 refused because covered by the Court's instructions; number 12 refused because covered; number 13 refused because covered; numbered 14 refused because covered; number 15 was refused; number 16 refused because covered; number 17 refused because covered; number 18 refused because covered; number 19 refused because covered; number 20 refused because covered; number 21 refused; 22 refused; 23 refused; 24 refused; 25 refused; 26 refused because covered; 27 refused; 28 refused because covered; 29 given as requested; 30 refused because covered; 31 given as

requested; 32 refused because covered; 33 refused because covered; 34 refused because covered; 35 refused because covered; 36 refused because covered; 37 refused; 38 refused because covered; 39 refused; 40 given as requested; 41 refused; 42 refused; 43 refused; 44 refused; 45 given; 46 given; 47 given; 48 given; 49 refused; 50 refused because covered; 51 given, also 52.

Whereupon, counsel for the Defendants, in the presence of the jury and before the jury retired, made the following exceptions, among others, to the charge of the Court:

To that part of the charge to the effect that it is sufficient for the Government to prove some of the schemes set forth and alleged in the indictment, and that it is not necessary for the Government to prove all of the schemes set forth in the [703] indictment, for the reason that if some of the schemes which are less than all of them are only proved in the first count of the indictment, such schemes will be not sufficient to support the mailing of the letters under the fourth count of the indictment.

The Defendants also excepted to that part of the charge to the effect that the postmark of the Post Office upon the envelopes is *prima facie* proof of the mailing of such letters, for the reason that if this be a rule of evidence applicable to this case, that in no event would such postmarks be *prima facie* proof of the mailing of the letters; at the best they would only be *prima facie* evidence of the mailing of the letters.

The Defendants also excepted to that part of the Court's charge that if any of the Defendants withdrew from the scheme or schemes, such withdrawal should be manifested by an affirmative act, for the reason the Court had not defined to the jury what would constitute in such event an affirmative act.

The Defendants also excepted to that part of the Court's charge which dealt with Regulation Number 74 of the Internal Revenue Bureau in determining upon some of the issues to be considered in the case, for the reason that such Regulation had not been introduced in evidence nor exhibited nor read to the jury. In connection with this last exception the Court stated that it was Defendants' requested instruction No. 40. Counsel for the Defendants replied that the requested instruction was not upon the subject charged by the Court.

Defendants' requested instruction No. 40 as given by the Court is as follows:

You are instructed that it is the law that a holding company which guarantees dividends at a specified rate on the stock of a subsidiary corporation for the purpose of securing new capital for the subsidiary and increasing the value of its stockholdings in the subsidiary may not deduct amounts paid in carrying out [704] this guarantee in computing its net income, but such payments must be added to the cost of its stock in the subsidiary.

Defendants' requested instruction No. 9 refused by the Court is as follows:

You must find from the evidence in this case, Jesse H. Shreve and Archie C. Shreve unlawfully,

knowingly, wilfully and feloniously placed or caused to be placed in the United States Post Office, and to be sent and delivered by the United States Post Office to the addressees therein named, the letters and other matters described in the indictment. Evidence that such letters and other matters were received by the addressees therein named, the post office mark thereon, evidence that the same were written or printed upon stationery bearing the name of the corporations named in the indictment herein, the signing of such letters and other matters by agents and employees of such corporations, may be considered by you as proof that such letters and other matters were placed or caused to be placed in the United States Post Office, and were sent and delivered to the addressees named, nevertheless you must further find, beyond a reasonable doubt, that the defendants Jesse H. Shreve and Archie C. Shreve knowingly participated in the mailing of such letters and other matters, or knew of and acquiesced in their mailing, before you can convict them of any of the offenses charged in the indictment.

Defendants' requested instruction No. 16 refused by the Court is as follows:

The official postmarks of the Post Office appearing upon the letters or envelopes set up in each count of the indictment, and which have been [705] introduced in evidence, is prima facie evidence that said letters were mailed at the post office so appearing on such postmarks, but are no proof that the defendants, or either of them, mailed such letters.

Defendants' requested instruction No. 42 is as follows:

The Court instructs you that you will wholly disregard that representations were made that Security Building and Loan Association had a paid-in capital stock of \$300,000.00; no such evidence has been offered or admitted in this case.

Defendants' requested instruction No. 43 refused by the Court is as follows:

You are instructed that there has been no evidence introduced or received in this case that the defendants, or either of them, made or caused to be made any representations that the Security Building and Loan Association had a paid-in capital stock of \$300,000.00, as alleged in the indictment.

Defendants' requested instruction No. 49 refused by the Court is as follows:

You are instructed that if you should believe from the evidence that prior to January 2, 1931, these defendants participated with other persons in the execution and devising of a scheme to defraud the persons whose names are set forth in each count of the indictment, and other persons unknown, and that they knowingly aided in the planning and preparation and carrying out of said fraudulent scheme from the time of its inception until some date prior to January 2, 1931, but that prior to said January 2, 1931, they abandoned said scheme and disconnected themselves with same, that under such circumstances you would not be authorized to convict said [706] defendants or either of them,

although you might be satisfied that other persons carried on such fraudulent scheme and continued to execute same, and in the execution thereof such other persons did mail or cause to be mailed the letters and documents set forth in said indictment.

Whereupon the jury retired to consider of its verdict and upon February 9, 1938, returned its verdict in open court finding both the defendants Jesse H. Shreve and Archie C. Shreve guilty as charged upon each eleven counts of the indictment.

On February 21, 1938, the Court pronounced judgment upon the defendants, and each of them, and sentenced each to imprisonment for four years upon each eleven counts of the indictment in such prison as the Attorney General may designate, sentence upon each count to run concurrently.

After the Court sentenced the defendants, and on the same day, the defendants filed jointly a written Notice of Appeal from the judgment and sentence to the United States Circuit Court of Appeals for the Ninth Circuit.

On the 23rd day of February, 1938, the Court signed an order which was filed with the Clerk on said date, fixing and extending the time of the defendants J. H. Shreve and Archie C. Shreve to prepare and file and procure to be settled their Bill of Exceptions and to file their Assignment of Errors, and extended the October, 1937, term of the Court for that purpose. Said order, omitting the caption, is as follows:

Upon motion of Jesse H. Shreve and Archie G. Shreve, Defendants-Appellants of the above

entitled cause, through their attorneys, for an Order extending the fixing the time within which to prepare, file and procure to be settled the Bill of Exceptions herein, [707] and the time within which to file the Assignment of Errors, pursuant to Rule IX of the Rules of Practice and Procedure in Criminal Cases promulgated by the Supreme Court of the United States, and

It Appearing that said Defendants-Appellants, in accordance with Rule III of said Rules of Practice and Procedure, have duly filed and taken their appeal on the 21st day of February, 1938, to the United States Circuit Court of Appeals for the Ninth Circuit, and

It Further Appearing to the Court that by reason of the voluminous testimony given in this case, and the numerous exhibits received in evidence, good cause exists for allowing said Defendants-Appellants additional time than is allowed by Rule IX of said Rules of Practice and Procedure within which to prepare, file and procure to be settled the Bill of Exceptions on such appeal, and within which to file the Assignment of Errors of which said Defendants-Appellants complain,

It Is Ordered that the time within which the said Defendants-Appellants shall procure to be settled and filed with the Clerk of this Court the Bill of Exceptions, and for filing their

Assignment of Errors, is hereby extended to and including the 31 day of May, 1938, and

It Is Further Ordered that the October, 1937, term of this Court is hereby extended to, and including, the date for procuring said Bill of Exceptions to be settled and filed and said Assignment of Errors to be filed, as aforesaid.

On February 23, 1938, the Court gave directions for the preparation of the record on appeal in respect to certain of the exhibits, which, omitting the caption, is as follows: [708]

In accordance with Rule VII of the Rules of the Supreme Court of the United States governing practice and procedure in criminal cases.

It Is Ordered that the Defendants-Appellants, Jesse H. Shreve and Archie C. Shreve, on or before the 15th day of March, 1938, prepare and file a Praecipe for the portions of the record required to be forwarded to the United States Circuit Court of Appeals for the Ninth Circuit, and that a copy thereof be served upon the Plaintiff-Appellee, prior to the filing thereof with the Clerk of this Court, and

It Further Appearing that Government's Exhibits numbered 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 77 and 78, are lengthy, bulky and cumbersome, and that it is also deemed necessary that said Exhibits be transmitted to the United States Circuit Court of Appeals of the Ninth Circuit for the inspection of the Judges of said Court,

Now, therefore, in accordance with Subdivision 4, Rule 14, of the Rules of the United States Circuit Court of Appeals for the Ninth Circuit,

It Is Ordered that Government's Exhibits numbered 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 77 and 78 be transmitted by the Clerk of this Court, in a safe manner and at the expense of said Defendants-Appellants, to the Clerk of the United States Circuit Court of Appeals of the Ninth Circuit, at San Francisco, California, and

It Is Further Ordered that description of said Exhibits or the pertinent portions thereof be included in the Bill of Exceptions, with such abstract thereof as will be necessary to readily identify said Exhibits.

That by virtue of the foregoing order, the Exhibits [709] enumerated therein are incorporated herein and made a part hereof.

The foregoing Bill of Exceptions contains all the evidence given, and correctly shows all the proceedings had, upon the trial of the cause.

Forasmuch as the matters above set forth do not fully appear of record, and in furtherance of justice, and that right may be done, the defendants Jesse H. Shreve and Archie C. Shreve, tender and present the foregoing as their Bill of Exceptions in this cause, and pray that the same may be allowed, settled and certified by the Judge of this Court who presided at the trial of this cause, and made a part

of the record of this cause which accordingly is done this 17 day of May, 1938.

DAVE W. LING

Judge of the United States District
Court for the District of Arizona
who presided at said trial.

CERTIFICATE AND ORDER APPROVING,
ALLOWING AND SETTLING BILL OF
EXCEPTIONS.

The foregoing Bill of Exceptions was filed on the 6th day of May, 1938, which is within the time fixed for filing said Bill of Exceptions by the order of this Court filed on February 23, 1938, and set forth in the foregoing Bill of Exceptions; that said Bill of Exceptions contains all the evidence given, and correctly shows all the proceedings had, upon the trial of this cause, and contains the entire charge of the Court to the jury; and said Bill of Exceptions is in all respects correct and it is hereby approved, allowed, settled and certified, and made a part of the record herein, as of the date of this certificate, all of which is done within the time prescribed by the order of this Court made and entered herein on February 23, 1938, as aforesaid, and within the October, 1937, term of this Court as extended [710] by said order.

Dated at Phoenix, in the District Court aforesaid, this 17 day of May, 1938.

DAVE W. LING

Judge of the United States District
Court for the District of Arizona
who presided at said trial.

Service of the foregoing proposed Bill of Exceptions is admitted this 6th day of May, 1938.

F. E. FLYNN

United States Attorney

[Endorsed]: Proposed Bill Lodged May 6, 1938.
Bill of Exceptions Filed May 17, 1938. [711]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS

Come now the defendants, Jesse H. Shreve and Archie C. Shreve, who appeal in the above entitled cause, and file and present herein their joint and several Assignment of Errors, whereby said defendants assign as errors in the record and proceedings in the District Court of the United States, in and for the District of Arizona, in the above entitled cause, the following errors, all of which have intervened to the prejudice of said defendants in this, namely:

I

The Court erred in overruling the special demurrer of defendants to the indictment, for the reason the indictment is duplicitous in that the fraudulent

schemes, as alleged in counts one and four of the indictment, are interwoven, and the several counts of the indictment are joined, to which ruling defendants excepted.

II

The Court erred in overruling defendants' objections to the bill of particulars filed by the Government, and denying defendants' motion to supplement said bill of particulars, because (a) it is evasive, indefinite, uncertain and incomplete; (b) be- [712] cause the bill refers defendants to the transcript of testimony and exhibits received in evidence, at the former trial of the cause; and (c) because the bill does not advise the Court or defendants of the evidence defendants were required to meet, to which rulings defendants excepted.

III

The Court erred in refusing to permit defendant Archie C. Shreve to testify on his own behalf, and on behalf of defendant, Jesse H. Shreve, concerning a conversation between Government's witness Glen O. Perkins, said defendant Jesse H. Shreve, and himself, about which said Government's witness Perkins had previously testified. The grounds urged for the objection, and the exception taken, and the full substance of the testimony rejected, are as follows:

The witness Archie C. Shreve testified on direct examination: "At or about the time the Century Investment Trust and the Security

Building and Loan Association opened offices in Phoenix, I had a conversation with regard to the future business of those corporations at the office of the Security Building and Loan Association and the Century Investment Trust, in the Adams Hotel Building, here in Phoenix. My brother J. H. Shreve, Glen O. Perkins and myself were present at that conversation. To the best of my recollection, it was said at that meeting that the companies had opened for business, including the Building and Loan Association at Phoenix, and things were not going so well. It was soon after the so-called great crash in 1929 and my brother J. H. Shreve came over to Phoenix from San Diego and stated that—

Mr. Flynn: Just a minute. At this time, your Honor, we object to the conversation between the defendants, for the reason that it is inadmissible. It is self-serving conversation between the defendants in this case.

The Court: Yes, purely self-serving. [713]

The Court: If you want to get in a statement in the record that Perkins made, that is different. Conversations between these people are purely self-serving.

Mr. Hardy: Not as between persons who had a conversation at which the witness Perkins was present, your Honor.

The Court: I say, if you want to get into the record Perkins' testimony—

Mr. Hardy: Associate him with the companies, All right. Q. What was said to Mr. Perkins at that time?

Mr. Flynn: Object to that, no foundation is laid for it; no impeaching question was asked Mr. Perkins about any such conversation when he was on the stand.

The Court: I don't recall.

Mr. Hardy: Certainly, Mr. Perkins testified about a conversation which he had with both Archie Shreve and J. H. Shreve.

The Court: All right, you have your conversation.

Mr. Hardy: For the purpose of the record, may we have an exception, and I will try to ask another question.

The Court: Yes, indeed.

Mr. Hardy: Q. Now, you have stated that about this time there was a conference between Glen O. Perkins, J. H. Shreve and yourself?

A. There was.

Q. At Phoenix, Arizona?

A. Yes, sir.

Q. Was this conversation directed to Mr. Perkins, or did it, in any way, involve him with respect to a connection with either the Century Investment Trust or the Security Building and Loan Association?

A. It did, and about the conduct of this business.

Q. Now, state it. [714]

Mr. Flynn: Object to it on the ground it is self-serving.

The Court: You are right back where you started from.

Mr. Hardy: Your Honor ruled that the question may not be answered?

The Court: I ruled that it is purely self-serving.

Mr. Hardy: Exception.

(The witness continuing) Mr. Perkins at that time had a conversation with me, or J. H. Shreve in my presence.

Q. What was that conversation?

Mr. Flynn: We object on the ground there is no foundation laid for any impeaching statement as to Mr. Perkins' statement, no impeaching question having been asked him at the time he was on the stand, and it is self-serving.

Mr. Hardy: It is not laid for the purpose of impeachment. The question was asked and predicated in regard to future business of the Century Investment Trust and the Arizona Holding Corporation. It is not asked for the purpose of impeaching——

Mr. Flynn: Well, it would be immaterial.

The Court: Well, it would only be self-serving.

Mr. Hardy: The conversation Mr. Perkins had with either of these defendants?

The Court: Well, if you want to impeach the witness, you have to lay the foundation for it always.

Mr. Hardy: I understand that.

The Court: Well, I am not going to argue with you.

Mr. Hardy: Exception.”

IV

The Court erred in refusing to permit defendant Archie C. Shreve to testify on his own behalf, and on behalf of defendant, [715] Jesse H. Shreve, concerning a conversation between Government's witnesses Glen O. Perkins and John C. Hobbs, and said defendant Jesse H. Shreve, and himself, about which said Government's witnesses, Glen O. Perkins and John C. Hobbs had previously testified. The grounds urged for the objection, and the exception taken, and the full substance of the testimony rejected, are as follows:

The witness Archie C. Shreve testified on direct examination: “I heard John C. Hobbs, who was a witness for the Government, testify on the occasion when he and Mr. Perkins came to San Diego in the summer or fall of 1931, and had a conference with me and J. H. Shreve with reference to the affairs of the Security Building and Loan Association. I believe Mr. Perkins and my brother Daniel H. Shreve telephoned me and asked for J. H. Shreve or myself to come to Phoenix. I told them it was not possible for us to come here and they wanted to hold a conference with us and were attempting to borrow some funds for the Building and Loan Association. As to who was to make the

loan I could not say. Mr. Perkins and Dan Shreve were the people asking for a loan on behalf of the Security Building and Loan Association or the Century Investment Trust. Mr. Perkins and Mr. Hobbs came to San Diego at their request.

Q. And what was said or done after they arrived in San Diego?

A. Mr. Perkins and Mr. Hobbs and myself, my brother J. H. Shreve——

Mr. Flynn: We object to any conversation at this conference, on the ground that no proper foundation has been laid, and neither Mr. Hobbs nor Mr. Perkins, when they were on the stand, no impeaching questions were asked, and the further ground it is self-serving.

The Court: Sustained.

Mr. Hardy: Well, at this time Mr. Hobbs and Mr. [716] Perkins came to San Diego, California, was there any discussion with respect to the business of either the Security Building and Loan Association, the Century Investment Trust or the Arizona Holding Corporation?

A. There was a discussion of the business of the Security Building and Loan Association, and the other companies may have been mentioned.

Q. And what was the nature of that discussion?

Mr. Flynn: We object to that on the ground it is immaterial, it is self-serving, and no

foundation being laid for any impeaching question.

The Court: Yes, the same question.

Mr. Hardy: Exception.

Q. Did you at any time, while these corporations, the Arizona Holding Corporation and the Security Building and Loan Association and the Arizona Holding Corporation were functioning, have any discussion with Mr. Perkins or Mr. Hobbs about the overhead expenses of those companies?

A. I did.

Q. Will you state please what that conversation was?

Mr. Flynn: I object to that on the ground that no time is fixed, that it is self-serving; no foundation being laid for an impeaching question.

The Court: Sustained.

Mr. Hardy: Exception."

V

The Court erred in refusing to permit the defendants to make an offer of proof with regard to the excluded testimony concerning the conversations between the defendants and the said Glen O. Perkins and John C. Hobbs, referred to in Assignments of Error III and IV. The error assigned is manifested by the follow- [717] ing proceedings:

"Mr. Hardy: May it please your Honor, in reference to the three questions which were

asked of this witness pertaining to the conversation on December 20th, and the conversation early in the year 1930, and a conversation in February, 1930, between this defendant and the defendants J. H. Shreve and Glen O. Perkins, and J. C. Hobbs, which, upon objection by the United States Attorney, were held inadmissible, and which objection was sustained, may we have the privilege at this time, for the purpose of the record only, of making an offer of proof in regard to those questions?

The Court: No.

Mr. Hardy: May we file with the Clerk of the Court a written offer?

The Court: You can do that if you want to, but you can't get it before the jury.

Mr. Hardy: Can we make it without the presence of the jury?

The Court: No, you may write it out.

Mr. Hardy: And may it be considered as a part of the evidence?

The Court: It would not be a part of the evidence because it is not admitted.

Mr. Hardy: As part of the record in this case?

The Court: You can file it with the Clerk.

Mr. Hardy: Then, may we have an exception to the refusal to be permitted to make the offer?

The Court: Yes."

VI.

The Court erred in refusing to permit defendant Archie C. Shreve to testify on his own behalf, and on behalf of his co-defendant Jesse H. Shreve, concerning a conversation between [718] Government's witness Glen O. Perkins, said defendant Jesse H. Shreve, and himself, with regard to Government's Exhibit 207, about which said Government's witness Glen O. Perkins had previously testified. The grounds urged for the objection, and the exception taken, and the full substance of the testimony rejected, are as follows:

“Q. (By Mr. Hardy) Now, Mr. Shreve, I hand you Government's Exhibit No. 207, which is a pamphlet or a circular of the Century Investment Trust, and which was identified by Mr. Perkins, the witness for the Government in this case. Did you ever have any conversation with Glen O. Perkins with respect to that circular?

A. I have.

Q. State what the conversation was.

Mr. Flynn: Object to it on the ground the time and place and those present has not been fixed.

Mr. Hardy: Q. Well, can you fix the time and place and who was present at the time you had this conversation with Mr. Perkins?

A. Early in 1930, January or February.

Q. Where?

A. At the office of the Century Investment Trust, Adams Hotel Building, Phoenix, Arizona.

Q. Who was present?

A. Myself and J. H. Shreve.

Q. Who else?

A. No one else.

Q. Was Mr. Perkins present?

A. I said Mr. Perkins, myself and J. H. Shreve.

Q. What was the conversation with Mr. Perkins in respect to that circular?

Mr. Flynn: We object to it on the ground it is hearsay, self-serving, and no foundation has been laid [719] for any impeaching question.

The Court: Probably is self-serving.

Mr. Hardy: Very well, your Honor. May we have an exception and may we also ask to make an offer of proof by filing it with the Clerk in connection with this Exhibit No. 207?

The Court: Very well.

Mr. Hardy: And that the offer of proof is denied, and we may have an exception to the denial."

VII.

The Court erred in refusing to permit defendants to make an offer of proof concerning the conversation between the defendant Archie C. Shreve and the said Glen O. Perkins, referred to in Assignment of Error VI, and for the reasons set forth in that Assignment of Error.

VIII.

The Court erred in admitting in evidence Government's Exhibit 125, which was received in evidence over the following objection and exception by counsel for defendants:

“Mr. Hardy: May it please your Honor, we object to the introduction of Government's Exhibit No. 125 for identification for the reason that it appears to be an exemplified copy of a warranty deed recorded in the office of the Recorder of Maricopa County, Arizona. Do I assume, Mr. Peterson, that the exemplified copy is offered under the provisions of the——

Mr. Peterson: Of the Federal Statute.

Mr. Hardy: Of the Federal Statute?

Mr. Peterson: And the State.

Mr. Hardy: The Code of 1928?

Mr. Peterson: And also the Federal Statute.

Mr. Hardy: We object, your Honor, for the reason the Federal Statute has no application to State records, and only applies to records of the Federal Government, or the officers of the Federal Government, and for the further reason the exemplified copy is not admissible under the provisions of the Arizona Code of 1928. It [720] would not be admissible under the rule in the Federal Court under the statute which was existing in the Territory of Arizona at the time of the admission of the Territory into statehood on February 14th, 1912; that under the statutes of the Territory then exist-

ing there is no provision for the introduction of an exemplified copy of the records of a county recorder without proof that the original record is not within the possession or control of the party offering the document, and for that reason the exhibit is not the best evidence. It is hearsay as to these defendants; that only in the absence of a showing as required by the law existing at the time of the admission of the Territory into statehood, either the original only could be introduced, or of proof that the original is not in the control or possession of the party offering it.

The Court: Overrule the objection.

Mr. Hardy: Exception."

The full substance of said exhibit is as follows: Exemplified copy of Warranty Deed dated December 20, 1930, executed by Arizona Holding Corporation by D. H. Shreve, President, R. F. Watt, Secretary, to Jas. M. Shumway, conveying Lot 3 in Block 2 of Goldman's Addition to the Town of Tempe, recorded on map or plat thereof of record in the office of the County Recorder of Maricopa County, Arizona, in Book 1 of Maps at page 49 thereof; acknowledged by D. H. Shreve and R. F. Watt as President and Secretary respectively before E. F. Young, Notary Public, December 20, 1930; filed and recorded at request of Arizona Title Guaranty and Trust Company May 12, 1931, W. H. Linville, County Recorder.

IX.

The Court erred in admitting in evidence Government's Exhibit 135, which was received in evidence over the following objection and exception by counsel for defendants: [721]

"Mr. Hardy: We object to the receipt in evidence of Government's Exhibit 135 for identification for the same reasons that we objected to the introduction of Government's Exhibit 125, and for the further reason that the exhibit has not been properly identified; no foundation has been laid for its admission.

The Court: Overrule the objection.

Mr. Hardy: Exception."

The full substance of said exhibit is as follows: Exemplified copy Realty Mortgage executed December 30, 1930 by Lyda Dreyfus, mortgaging to Theo. Castle the Southeast quarter of the Northwest Quarter of Section 3, Township 8 South, Range 18 West, Gila and Salt River Base and Meridian; Lot 3 in Section 3, Township 9 South, Range 18 West, Gila and Salt River Base and Meridian; Lot 1 in Section 5, Township 9 South, Range 18 West, Gila and Salt River Base and Meridian; all in Yuma County, Arizona; secures five promissory notes of even date calling for principal sum of \$32,000, with interest at the rate of 8½% per annum, payable quarterly, \$2000 due on or before one year after date, \$2000 on or before two years after date, \$2000 on or before three years after date, \$8000 on or before four years after date,

and \$18,000 on or before five years after date; recorded at request of Security Title Company Jan. 5, 1931, A. K. Ketcherside, County Recorder by Lucy Frank, Dep. Rec.; Assigned to Security Building and Loan Association Jan. 5, 1931, see Book 4 Assignments page 351, A. K. Ketcherside, Co. Rec. Released by instrument dated Nov. 4, 1931 see Book 8 Releases page 359, A. K. Ketcherside, Co. Rec. by R. P. Leatherman, Dep. Rec.

X.

The Court erred in admitting in evidence Government's Exhibit 137, which was received in evidence over the following objection and exception by counsel for defendants:

“Mr. Hardy: We make the same formal objection, your Honor, to the introduction of Government's Exhibits [722] 136 and 137 for identification, for the same reasons we made to Government's Exhibit No. 125.

The Court: The same ruling.

Mr. Hardy: Exception.”

The full substance of said exhibit is as follows: Exemplified copy Assignment of Mortgage executed by Theo Castle January 5, 1931, acknowledged same date before Vivian Akerberg, Notary Public San Diego County, California, consideration \$10.00; assigns to Security Building & Loan Association mortgage dated Dec. 30, 1930, executed by Lyda Dreyfus to Theo Castle, which mortgage was recorded on Jan. 5, 1931 in Book 40 of Mortgages, page

Blotter No. 57, in the office of the County Recorder of Yuma County, Arizona; recorded at request of Security B & L Assn Jan. 15, 1931, A. K. Ketcherside, County Recorder Yuma County.

XI.

The Court erred in admitting in evidence Government's Exhibit 142, which was received in evidence over the following objection and exception by counsel for defendants:

"Mr. Hardy: We object to the receipt in evidence of Government's Exhibit 142 for identification, for the same reasons that we objected to the introduction in evidence of Government's Exhibit 125.

The Court: Overruled.

Mr. Hardy: And for the further reason, your Honor, it does not appear on the face of this document that it was signed at the request of either of the defendants now on trial.

The Court: It may be received.

Mr. Hardy: Exception."

The full substance of said exhibit is as follows: Exemplified copy of Mortgage executed July 14, 1930, by A. E. Rayburn, a widow, mortgaging to Arizona Holding Corporation, consideration \$8700.00, the West Half of Northwest Quarter of Northwest Quarter [723] of Sec. 23, Tp. 1 N. R. 2 E. of the G. & S. R. B. & M., and acknowledged on July 21, 1930, before Roy C. Walters, Notary Public Maricopa County, Arizona; filed and re-

corded at request of Arizona Holding Corp. July 21, 1930, J. K. Ward, County Recorder. Notation: For release of this mortgage see Book 37 of Releases of Mortgage page 67; for assignment of this mortgage see Book 17 Assignments of Mortgages, page 115.

XII.

The Court erred in admitting in evidence Government's Exhibit 143, which was received in evidence over the following objection and exception by counsel for defendants:

“Mr. Hardy: We object to the receipt in evidence of Government's Exhibit No. 143 for identification, for all of the reasons for which we objected to the receipt in evidence of Government's Exhibit 125, and for the additional reason, your Honor, because it appears upon the face of Government's Exhibit 143, which is an exemplified copy of an assignment of mortgage, that it was executed by the Arizona Holding Corporatoin by D. H. Shreve, President, and by R. F. Watt, Secretary, and acknowledged before E. F. Young, a Notary Public. There is nothing upon the face of this document which discloses that either the defendants had anything to do with it, and in addition it appears that it is executed by D. H. Shreve, as President of the Arizona Holding Corporation, whereas D. H. Shreve is now deceased, and by reason of that fact, any acts or declarations made by the defendant, D. H. Shreve, during his lifetime, are

not now admissible as against these defendants; for the reason that neither of these defendants now have the opportunity to examine the said D. H. Shreve with respect to the purposes or contents of this document, nor did they have such opportunity at the previous trial of this case, for the [724] reason that the said D. H. Shreve was alive and a defendant in that action, and not subject to cross examination by any parties to that action.

The Court: The objection is overruled.

Mr. Hardy: Exception."

The full substance of said exhibit is as follows: Exemplified copy of Assignment of Mortgage executed July 21, 1930, by Arizona Holding Corporation by D. H. Shreve President and R. F. Watt Secy, to Security Building and Loan Association, consideration \$10.00, assigning to Security Building and Loan Association mortgage bearing date July 14, 1930, executed by A. E. Rayburn to Arizona Holding Corporation, which mortgage was recorded on July 21, 1930 in Book 244 of Mortgages, records of Maricopa County, Arizona, page 58, in the office of the County Recorder of said county; acknowledged before E. F. Young, Notary Public of Maricopa County, Arizona, on same date, by D. H. Shreve and R. F. Watt, President and Secretary; filed at request of Security Bldg. & Loan Assn. Jan. 2, 1931, W. H. Linville, County Recorder of Maricopa County.

XIII.

The Court erred in admitting in evidence Government's Exhibit 84, which was received in evidence over the following objection and exception by counsel for defendants:

"Mr. Hardy: Your Honor, we object to the introduction of this exhibit, for the reason that it is apparent therefrom that some of the items on the pages offered would not be admissible against the defendants in this case, and for the reason no proper foundation has been laid for the admission of the offered exhibit, and for the second reason, it appears from the witness himself that they are not the first or original or primary documents or information from which the entries are made. The witness himself has said they are transcribed entries. [725]

The Court: It may be received.

Mr. Hardy: Exception."

The full substance of said exhibit is as follows: A transcription of the general ledger of the First National Bank of Prescott, as follows:

Resources	Friday Nov. 8, 1929.
Loans & Discounts	\$315,355.34
U. S. Gov't Securities	149,880.71
Other Bonds, Stocks, etc.	60,342.70
Leasehold Improvements	3,677.36
Furniture & Fixtures	3,314.86
Interest Paid	2,235.48
Expense General	9,555.32

Suspense	134.44
Stationery and Supplies	2,405.93
Federal Res. Bank, L. A.	28,197.27
Chase Natl. Bank, N. Y.	21,369.58
Western Nat. Bank, L. A.	9,012.30
Boatmens Nat'l Bank, St. Louis	8,970.36
Pacific Nat. Bank, S. F.	3,662.35
1st Nat. Bk. Ariz., Phoenix	831.06
Com'l Nat. Bk. Phoenix	8,471.00
El Paso N/B, El Paso	1,673.89
Transit—Cash Col's	1,186.13
Exchange Maturing	20,000.00
Over & Short	29.90
Cash on Hand	20,715.21
Gold Bullion	781.40

\$678,163.34

Liabilities

Capital Stock	\$100,000.00
Surplus	25,000.00
Undivided Profits	6,554.04 (red)
Interest Received	9,816.22
Exchange	157.55
Safe Dep. Rentals	134.00
Escrow Fees	28.00
Other Earnings	6.75
Certified Checks	—
Cashiers checks	8,549.39
Cashiers Vouchers	—
Demand Deposits, Com'l	288,765.23
Demand Certified Dep.	—
Time Deposit Savings	125,448.61

Time Cert.—Dep.	18,220.00
Time Pub. Funds	75,000.00
Postal Savings	27,037.59
	<hr/>
	\$678,163.34

XIV.

The Court erred in admitting in evidence Item 4 of Govern- [726] ment's Exhibit 90, which was received in evidence over the following objection and exception by counsel for defendants:

“Mr. Hardy: We object to its admission, upon the grounds it has not been properly identified, no foundation has been as yet laid by this witness, or any other witness, for its admission, and for the further reason that it is not the first permanent entry of the transaction, and it is hearsay as to these defendants.

The Court: It may be received.

Mr. Hardy: Exception.”

The full substance of Item 4 of said exhibit is as follows: Record—letter of First National Bank of Prescott, dated March 8, 1929, addressed to First National Bank of Phoenix, Arizona, enclosing collections and credit items, which includes an item dated March 7, 1929, No. 38, Maker Arizona Holding Corporation, payor, 91-11, amount \$20,000; last endorsed Us.

XV.

The Court erred in admitting in evidence parts of Government's Exhibits 92, 93 and 94, which

were received collectively in evidence over the following objection and exception by counsel for defendants.

“Mr. Flynn: We offer in evidence, if the Court please, the parts of Government’s Exhibits 92, 93 and 94, which the witness has identified, and in order to keep the record straight as to the part of the exhibits which is going into the record, we ask leave to read them into the record. We are also offering the printed heading which shows what the entries are in regard to.

Mr. Hardy: (on voir dire examination of the witness) Mr. Evans, did you testify that these entries were made in your own handwriting, the ones referred to by Mr. Flynn?

A. Yes, the entries on the first line under date of March 7th, over to that column including the amount. [727]

Q. Are those the first permanent entries on that transaction, or are they reflected from other records or memoranda of the Bank?

A. That is only an auxiliary record or memorandum record.

Q. Well, is it the first record of the transaction?

A. It is not.

Q. It is a secondary record?

A. A secondary record.

Mr. Hardy: We object to the introduction of the portions of the exhibits referred to by Mr. Flynn, for the reason that it appears they

are not the first record of the transaction; for the second reason that no proper foundation has been laid for the admission; that they are hearsay as to these defendants, and that from the exhibits themselves, they appear to be records referring to transactions between the Bank and Joseph E. Shreve, J. G. Cash, and Glen O. Perkins.

The Court: They may be received.

Mr. Hardy: Exception."

The full substance of said Exhibits 92, 93 and 94 are as follows:

(Exhibit 92): The heading Maker: Shreve, Joseph E., Care of Southwest Union Securities Corporation, San Diego, California, under the date March 7th, 1929; Security or endorser, 3-7-29, endorsed Jesse H. Shreve, Certificate 100, Sunset B. and L. Association, San Diego, \$12,500.00; per cent. 7; Number, 127; Amount, \$10,000.00.

(Exhibit 93): Maker: Glen O. Perkins, 101 Scott Street, Tucson, Arizona, under date of March 7th, 1929; Security or endorser, 3-7-29, 200 Security B. and L., Tucson, endorser, J. H. Shreve; per cent, 7; Number, 128; Amount \$10,000.

(Exhibit 94): Maker: Cash, J. G., address 101 Scott [728] Street, Tucson; Date, March 7th, 1929; Security or endorser, 100 Security B. and L. Association, Tucson; Endorser, J. H. Shreve.

XVI.

That if the exhibits referred to in Assignments of Error XIII, XIV and XV were admitted in

evidence under the authority of Section 695, Title 28, USCA, then the Court erred because (1) the offenses charged in the indictment are alleged to have been committed before the enactment of said Act; (2) that by the express terms of said Act it is prospective only, and therefore said Act did not, and could not, apply to the trial of this case; (3) that if said Act is construed to apply to the trial of this case, notwithstanding the objections raised in subdivisions 1 and 2, *supra*, then said Act is unconstitutional and void as to these defendants, because (a) it dispenses with the necessity of confronting defendants with the witnesses against them in violation of the Sixth Amendment to the United States Constitution; (b) it alters the legal rules of evidence and requires less or different testimony to convict defendants than the law required at the time of the commission of the alleged offenses, and thus the Act is *ex post facto* in violation of Section 9, Article 1, of the Constitution of the United States; (c) it deprives defendants of their liberty without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

XVII.

The Court erred in rejecting the testimony of Government's witness Faulkner, on cross examination by counsel for defendants, relative to a transaction appearing on the books of the First National Bank of Prescott and referring to defendant Jesse H. Shreve. The objection and exception and the full substance of the testimony rejected is as follows:

By the witness on cross examination: "The entries on Exhibit 106 for identification refer to W. S. Millener. It is another loan transaction with John P. Mills. I did [729] not know Mr. Mills Personally. The entry above Mr. Mills is J. H. Shreve, the defendant here. That is another loan transaction for the amount of \$5000.

Q. And does this book show what happened to that loan?

Mr. Flynn: We object to that on the ground it is not proper cross examination. Some other entry in the book, your Honor, if I understand, he is asking.

The Court: Sustained.

Mr. Hardy: Exception, please."

XVIII.

The Court erred in admitting in evidence Government's Exhibit 61, which was received in evidence over the following objection and exception by counsel for defendants:

"Mr. Hardy: We object, your Honor, to the introduction of Government's Exhibits Nos. 61 to 70, inclusive, for identification, for the reason that no proper foundation has been laid for the admission of these books, and for the additional reason that the books are hearsay, and that they are not the best evidence of all or of many of the transactions appearing in such books. For the further reason that the entries therein are not the primary or original entries, because it

now appears from this testimony of Mr. Watt, who is a witness for the Government, that these books were rewritten from information, data, from books or records, and from information which came into his possession or under his observation after he became employed by the Century Investment Trust or the Arizona Holding Corporation, and that such data and books and records were not prepared by him, and, therefore, these books as a result are a transcription of entries, memoranda or records which were made by other persons. For the further reason that it appears from the indictment [730] herein that the last letter appearing in such indictment is October 24th, 1931, and that the testimony of the witness Watt is, that many of the entries in these books and records were made and reflected transactions after that date. We further object to the admission of these exhibits marked for identification, for the reason that they are incompetent, irrelevant and immaterial, and for the further reason that there has not been shown by the Government that either of the defendants herein made any of such entries, dictated the making of any such entries, or that they knew that any of such entries were made in such books, and in such exhibits.”

The full substance of said exhibit is as follows: General Ledger of Century Investment Trust, under one binder, subdivided and marked: Assets, Liabili-

ties, Revenues and Expenses. First entry under Assets November 30, 1931, account No. 111, Notes Receivable; Account No. 112, Accounts Receivable; Account No. 114, Insurance Accounts Receivable; Account No. 116, Accrued Interest Receivable. First entry under Liabilities October 30, 1929, Account No. 200, authorized capital stock Preferred; Account No. 200-A, unissued capital stock Preferred; Account No. 201, authorized capital stock Common; Account No. 201-A, unissued capital stock Common; Account No. 202, authorized capital stock Series A Preferred; Account No. 202-A, unissued capital stock Series A Preferred; Account No. 203, capital account Preferred; Account No. 204, capital account Common; Account No. 205, capital account Series A Preferred; Account No. 206, Capital Surplus; Account No. 207, earned surplus; Account No. 208, Reserves; Account No. 209, Contingent Fund; Account No. 212, Reserve for Premiums; Account No. 220, Notes and Mortgages Payable; Account No. 223, Contingent Commission Account; Account No. 225, Profit and Loss; First entry under Revenues, October 23, 1931, Account No. 300, interest earned; Account No. 304, stock and bond sales; Account No. 305, cost of [731] stock and bond sales; Account No. 306, Real Estate sales; Account No. 307, cost of real estate sales; Account No. 308, insurance commissions earned; Account No. 315, rentals; Account No. 325, miscellaneous earnings; First entry under Expenses November 30, 1930, Account No. 400, General Expense; Account No. 401, Insurance Department

Expense; Account No. 402, Property Expense; Account No. 411, Commissions paid on sale of capital stock; Account No. 415, commissions paid.

XIX

The Court erred in admitting in evidence Government's Exhibit 70, for all the reasons urged in Assignment of Error XVIII. The full substance of said exhibit is as follows: Stockholders' Ledger Arizona Holding Corporation, subdivided; Real Estate, Stocks and Bonds, Notes Receivable, Accounts Receivable, Notes Payable, Accounts Payable, Real Estate; first entry dated 6-12-31, including West half Lots 6 and 7, Blk. 15, Mesa; Lots 5 and 6, Blk. 231 of Tucson, with notation "This property came from Mary Robson for stock of Century Investment Trust." Stocks and Bonds: showing various stock transactions with Century Investment Trust, entitled "Insurance Securities Corporation". Notes Receivable includes O. H. and Mary Robson dated 1-23-30 for \$1500.00, due 4-23-30, security 740 shares preferred stock Century Investment Trust and 400 shares common stock Century Investment Trust. Accounts Receivable includes items Citizens State Bank, John C. Hobbs, Mesa Agency, Glen O. Perkins, W. H. Perry, O. H. Robson, Security Building and Loan Association. Notes Payable includes items of Century Investment Trust note dated 12-16-31, amount \$250,000.00, payable 12-16-36; also note Century Investment Trust dated 5-16-32, amount \$12,800.00, due 12-31-33; also Mary Robson

note, payable 11-1-30, secured by 80 shares preferred and 80 shares common and 80 shares Series A preferred stock Century Investment Trust; also James M. Shumway note dated 2-23-32, amount \$550.00, dated 2-23-37. Accounts Payable, containing miscellaneous [732] accounts with Arizona National Bank, Century Investment Trust, D. H. Shreve and R. F. Watt.

XX

The Court erred in admitting in evidence Government's Exhibit 71, which was received in evidence over the following objection and exception by counsel for defendants:

“Mr. Hardy: Now, your Honor, we object to the receipt of the books in evidence identified as Government's Exhibit Nos. 71, 72, 73, 74, 75, 77 and 78, for the reason that it appears from the testimony of the witnesses for the Government that the books and records embraced by those exhibits marked for identification are not books and records of original entry, and that they are not the first permanent transaction, and that these books and records reflect entries which are transcribed from other tickets, documents or memoranda. For the further reason that the books and records as to the defendants on trial are hearsay. They are secondary evidence and not the best evidence of the transactions indicated by the books. And for the further reason it has not been shown that the defendants on trial either directed, supervised or

caused any of the entries in those books to be made.

The Court: Overrule the objection.

Mr. Hardy: Exception."

The full substance of said exhibit is as follows: General Ledger Security Building and Loan Association, subdivided and marked Assets, Liabilities, Capital, Income, Expense—Tucson Assets, Liabilities, Revenues, Expenses. First item under Assets [733] dated Nov. 23, 1929, account secured by loans on real estate, setting forth various accounts to various persons, including W. H. Perry, A. W. York, Loan No. 37, Shumway Loans Nos. 36 and 44, Rayburn Loans Nos. 26 and 27, York Loan No. 19, Dreyfus Loan No. 41, Arrington Loans Nos. 39 and 42. Also sets forth loans secured by stock of Association; loans secured by United States and Arizona bonds; Investment Certificates of Association and banks; Furniture and Fixtures; Supplies—inventory; Prepaid Insurance; Items in process of Collection; Cash on hand, first item dated Nov. 22, 1929; account with Commercial National Bank, Phoenix, Arizona; account with Arizona Bank; Citizens State Bank; First National Bank of Prescott; The Valley Bank, Mesa; Bank of Chandler; Mesa Agency, Globe Agency; Sunset Building and Loan Association, San Diego, California, pass book No. 3756, first entry Nov. 22, 1929; Century Investment Trust, first entry Nov. 22, 1929; Century Investment Trust insurance account; Century Investment Trust clock account. Liabilities: Loans secured by

real estate repaid, first entry March 31, 1930; Investment Certificate pass-book shares, first entry Nov. 22, 1929; Installment Investment Certificates Class D. first entry May 10, 1930; Installment Investment Certificates Class E, first entry March 25, 1930; Installment Investment Certificates Class F, first entry April 10, 1930; Income Certificates, first entry March 1, 1930; Full Paid Investment Coupon Certificates; Full Paid Investment Non-Coupon Certificates, entries of Tucson office [734] Security Building and Loan Association; Notes Payable, Notes Payable to Banks, Loans Real Estate Incomplete, first entry Nov. 22, 1929, disclosing various loans to various parties including Shumway loan No. 38, Arrington Loan No. 39, York Loans Nos. 19 and 37, Rayburn Loans Nos. 26 and 27, Dreyfus Loan No. 41, and Arrington Loan No. 42; Cash, first entry Jan. 19, 1930; Escrow Account; Capital; Undivided Profits Dec. 31, 1930, \$3,176.13 (red), Undivided Profits Dec. 31, 1931, \$3,040.16, Profit and Loss Dec. 31, 1930, \$3,363.28 (red); Reserve Jan. 31, 1931, \$135.97 (red); Profit and Loss Dec. 12, 1930, \$187.15; Income, interest on loans, first item Jan. 2, 1930; Interest other than loans, first item Dec. 31, 1930; Profit and Loss Dec. 31, 1930, \$1,392.30 (red); Interest investments, real estate loans, first item Jan. 29, 1931; Fees and commissions, first item Dec. 31, 1929; fees on loans, first item Jan. 31, 1931; Fees other than loans, first item May 31, 1930; Expenses: salaries of officers, first entry Dec. 31, 1930; Legal fees and salaries, first item Jan. 24, 1930;

Salaries employees, first item Jan. 22, 1931; Various items including accounting and auditing fees, agents commissions, rents, advertising and publicity, taxes and licenses, interest on notes payable, interest on full-paid investment certificates, interest on full-paid investment coupon certificates, interest on full-paid interest non-coupon certificates, interest on investment certificates pass-book, interest on monthly income certificates, telephone and telegraph, sundry supplies and expenses, insurance, postage and stamped envelopes. Revenues, Expenses, title expense, donations, flowers and trimming expense, automobile expense, travel expense, prepaid insurance, accrued interest. Sundry supplies and expense, with notation "Items on this sheet transferred to detail sheets on June 13, 1930, E. F. Y." Interest on loans, interest on investments, fees on loans, other fees, salaries other than officers, control account, salaries other employees, control account, agents commissions and salaries, [735] control account, legal fees and salaries, control account, auditors fees, control account, rent, control account, advertising and publicity, control account, taxes and licenses, control account, income discounts, control account, interest on notes payable, control account, interest on full-paid certificates, control account, interest on pass-book accounts, control account, interest paid on deposits, control account, sundry interest paid, control account, printing and stationery, control account, telephone and telegraph, control account, sundry supplies and expenses, control ac-

count, new accounts expense, control account, insurance, control account, postage and stamped envelopes, control account, revenue stamps, control account, title expense, control account, donations, control account, flowers and trimmings, control account, automobile expense, control account, travel expense, control account, bank service expense, cash short, control account, interest on full-paid investment certificates non-coupon, control account, expense account, Mesa Agency, control account, Arizona Bank control account, Expenses Advances, control account, Prepaid insurance control account, accrued interest receivable control account, escrow account control account. Tucson office: Assets: Loans, first entry April 19, 1929; loans secured by stock in Association, first entry 6-26-30. Investment Certificates other building and loan associations, furniture and fixtures, cash account, first entry March 8, 1929; Arizona-Southwest Bank, first entry March 22, 1929; Commercial National Bank, first entry April 5, 1929; Consolidated National Bank, first entry June 1, 1929; Old Dominion Bank, first entry May 15, 1930; Phoenix office Security Building and Loan Association, first entry Nov. 23, 1929; Bisbee Agency, first entry Dec. 30, 1930; Sunset Building and Loan Association, first entry May 1, 1930; Principal and interest (Overland Hotel Mortgage) \$30,860.43; United States and Arizona bonds owned, State Treas. March 8, 1929, \$50,000.00; Certificates of Account, first entry March 8, 1929; First National Bank of [736] Prescott, 5 entries of \$10,000 each, same date; to State Treasurer \$50,000. Items in process of collection. Liabilities: Invest-

ment Certificates Account pass-book, first entry 3-8-29; monthly income investment certificates, first entry 9-30-29; full-paid investment certificates, first entry 1-3-29; Installment Investment Certificates Class A, first entry 4-4-29; Installment Investment Certificates Class B, first entry 1-3-30; Installment Investment Certificates Class C, first entry 1-3-30; Installment Investment Certificates Class D, first entry 3-28-30; Installment Investment Certificates Class E, first entry 3-28-30; Installment Investment Certificates Class F, first entry 3-9-30; Full Paid Investment Certificates, first entry 10-31-30; Interest paid to Banks, first entry 6-25-30; Incomplete Loans, first entry 7-18-30; Capital Stock Account, first entry 3-8-30; Undivided Profits Account, Capital Stock Account, Capital Surplus, Undivided Profits, first entry 12-31-30, \$456.70; Profit and Loss Account, first entry 6-2-29, balance \$1,513.65, Profit and Loss Account, 12-31-30, Balance \$456.70; Real Estate loan repaid, first entry 5-1-30; Revenues: Interest received account loans, first entry 1-4-30; fees on loans, first entry 1-3-30; interest on investments other than loans; first entry July 3, 1930; interest on Sunset Building and Loan certificates, balance \$308.00; other fees, first entry 1-6-30; Expense account, first entry 4-13-29; Salaries other Officers, first entry 6-9-30; Salaries other employees, first entry 6-6-30; Agents commissions and salaries, first entry Nov. 10, 1930; Auditing and accounting, first entry 6-14-30; rent, first entry 7-14-30; Advertising and Publicity, first entry 6-9-30; Fees and Licenses, first entry 6-10-30; Interest on notes pay-

able, first entry 6-25-30; interest paid account—full paid certificates, first entry 6-3-30; interest paid account pass book certificate, first entry 1-3-30; interest paid account pass book certificate, first entry 6-3-31; interest other deposits, first entry August 24, 1931; sundry interest paid, first entry August 15, 1930, printing [737] and stationery, first entry 6-9-30; telephone and telegraph, first entry May 7, 1930; sundry supplies and expenses, first entry 1-7-30; new account expense, first entry 1-14-30; insurance, first entry 5-20-30; postage and stamped envelopes, first entry 1-29-30; title expense, first entry Jan. 20, 1930; donations, first entry March 24, 1930; dues and subscriptions, first entry Dec. 3, 1930; flowers and trimming account, first entry Dec. 31, 1931; travel expense, first entry 7-15-30; automobile expense, first entry 7-10-30; cash short, first entry 1-20-31; interest on full paid investment non-coupon certificates, first entry Nov. 1, 1930.

XXI.

The Court erred in permitting Government's witness Schroeder to testify from, and in regard to, a summary which he made from books and records of Arizona Holding Corporation, Century Investment Trust and Security Building and Loan Association, which testimony was admitted over the following objection and exception by counsel for defendants:

“Mr. Peterson: Q. From your examination of the books of the Security Building and Loan Association now in evidence, did you determine

whether or not Loan 26, known as the Rayburn Loan, is included in the figure of \$193,929.46 set out in the financial statements of the Security Building and Loan Association as of December 31st, 1931?

Mr. Peterson: And add to that, Exhibit No. 160, Loans secured by first mortgage on Arizona real estate.

Mr. Hardy: Now, your Honor, we object to that for the reason that it has been testified by the witness that his audit is not based entirely upon the books and records of the corporations named in this indictment which have been introduced in evidence, or which are in Court, but that it has been based upon and is reflected from the examination of other records, books and documents [738] of corporations, or from other sources which are not in evidence, or before this Court, or available.

The Court: That is not the witness's testimony. He said his audit is in connection with the books in evidence, and in connection with that, he made other investigations of other corporations, but his audit is based upon the books and records introduced here in evidence. The objection is overruled.

Mr. Hardy: Exception.

The Witness: I believe that exhibit is dated 1930, rather than 1931.

Mr. Peterson: December 31st, 1930?

A. Yes, Loan 26 is included.

Q. And from your examination of the books in evidence, can you determine whether or not Loan No. 37, known as A. Y. York loan is included in the figure of \$193,929.46 set out in Exhibit 160 in evidence, in the amount of loans secured by first mortgages on Arizona real estate?

Mr. Hardy: Your Honor, for the purpose of the record, may we have the same objection to all this testimony without the necessity of repeating it?

The Court: Oh, yes.

Mr. Hardy: And I understand that we have an exception to the ruling of the Court?

The Court: All right.

The Witness: It is."

XXII.

The Court erred in refusing to strike the testimony on direct examination of Government's witness Schroeder, based upon a summary of books and records of Century Investment Trust, Arizona Holding Corporation and Security Building and Loan Association, [739] for the following reasons urged at the close of the direct examination of said witness:

"Mr. Hardy: Now, may it please your Honor, I desire to make a motion to strike all of the testimony of the witness Schroeder based upon his testimony and his audit generally, for the reason that it now appears that his audit

is made with respect to the transactions about which he testified upon the records of corporations not named in the indictment, and upon records of corporations which are neither in evidence nor before this Court.

The Court: The motion is denied.

Mr. Hardy: Exception."

XXIII.

The Court erred in permitting Government's witness Fierstone to testify from, and in regard to, a summary which he made from books and records of Century Investment Trust, which testimony was admitted over the following objection and exception by counsel for defendants:

"Mr. Hardy: Your Honor, we now object to the witness giving any testimony based upon an audit of the books of the Century Investment Trust for the reason that it has been testified by a witness for the Government, Mr. Watt, that these books, in their entirety, were rewritten by him, and therefore, they are not the original or first permanent entries of the books of the Century Investment Trust, and the Government's witness, Watt, further testified that the records and data and memoranda from which the books were re-written, were filed with other books, records and memorandum of the Century Investment Trust; and for the further reason that it has not been shown by the Government thus far that these defend-

ants, or either of them, caused the books of the Century Invest- [740] ment Trust to be re-written, or that they knew that they were re-written, or that they acquiesced in their re-writing them; therefore, generally, the books are hearsay, incompetent, irrelevant and not the best evidence as to the defendants on trial.

The Court: Overruled.

Mr. Hardy: Exception.”

XXIV.

The Court erred in permitting Government's witness Fierstone to testify, as an auditor for the Government, relative to transactions which occurred after October 24th, 1931, over the following objection and exception by counsel for defendants:

“There is also a charge against the accounts receivable to the Arizona Holding Corporation of \$11,586.07, and on December 16th, 1931—

Mr. Hardy: We object to any testimony, your Honor, after October 24th, 1931, because testimony after that date is not within the confines of the Bill of Particulars or the indictment.

The Court: Go ahead.

Mr. Hardy: Exception.

The Witness: On December 16th, 1921, the stock of the Guardian Western Company, then being valued at \$845,000.00, was sold along with the other assets of the company to the Arizona Holding Corporation, this stock being sold for \$231,145.05.

The witness continuing: That \$231,145.05 was the purchase of this Guardian Western stock. Well, at that time the assets of Century Investment Trust were sold to the Arizona Holding Corporation and the liabilities were transferred, and the Century Investment Trust received a note from the Arizona Holding Corporation for the difference between the two, amounting to \$250,000.00. [741] The books do not record anywhere the payment of the note of the Arizona Holding Corporation to the Century Investment Trust. I believe that is still an asset of the company.

Mr. Flynn: Now, can you tell from the books, Mr. Fierstone, what became of the stock of the Building & Loan Association which was held by the Century Investment Trust?

The Witness: On December 16th, 1931, it was being carried at a valuation of—

Mr. Hardy: Now, we make that same objection, your Honor. It is a transaction which occurred after the last date in the Bill of Particulars.

The Court: He may answer.

Mr. Hardy: Exception.

The Witness: On December 16th, 1931, it was being carried at a valuation of \$99,457.50 and on that date it was charged off as a loss."

XXV.

The Court erred in admitting in evidence Government's Exhibit 207, which was received in evi-

dence over the following objection and exception by counsel for defendants:

“Mr. Hardy: We object, because it appears to be addressed to Manuel K. King, and for the further reason it is a printed pamphlet. The true name of J. H. Shreve does not appear on here as President of the Century Investment Trust, but it is in stereotype form; it is not the original signature.

Mr. Peterson: Identified by the witness as being a facsimile signature.

Mr. Hardy: Very well, that does not make it an original signature, and the absence of some proof that J. H. Shreve, the defendant here, knew that this [742] circular was mailed, or caused it to be mailed; the mere fact that a facsimile signature appears on there, we don't think is sufficient to entitle it to be admitted in evidence. It is hearsay. It is incompetent as to him.

The Court: It may be received.

Mr. Hardy: And another objection; the mere fact that Mr. King took it from the post-office is no proof it was mailed to him. There has not been any proof it was mailed to him, and in addition, it appears on the face of it that it is not addressed to this witness.

The Court: It may be received.

Mr. Hardy: Exception.”

The full substance of said exhibit is as follows: An invitation of the Board of Directors of Century

Investment Trust, extended at the request of J. H. Shreve to Manuel "K." King, disclosing J. H. Shreve as President, San Diego, California, and mentioning A. C. Shreve, Phoenix, Arizona, Vice-President and Director and Officer of several financial institutions of Arizona and California. The exhibit recites, among other things, that Century Investment Trust owns entirely, others in which it owns control, and others in which it has a stock ownership, Security Building and Loan Association, First National Bank of Prescott, Arizona, Citizens State Bank, Phoenix, Arizona, Arizona Holding Corporation, Phoenix, Arizona, Sunset Building and Loan Association, San Diego, California, Commonwealth Building Company, San Diego, California, United States National Bank, San Diego, California, First National Bank, Oceanside, California, Southwest Union Securities Corporation, San Diego, California. The pamphlet or circular further states that the present stock offering of Century Investment Trust is to provide funds with which to purchase, under the present most favorable conditions, additional banking [743] institutions, building and loan companies, seasoned securities which have a long period of successful record, and every form of profitable investment offering, to the end that Century Investment Trust may be known as a giant financial institution not only of "Arizona for Arizona" but of the "West for the West". It further recites that Century Investment Trust is a prosperous, healthy and growing

corporation. It invites the addressee in the name of the Company and Board of Directors to join the Company before the very early advance in the price of stock of Century Investment Trust.

XXVI.

The Court erred in admitting in evidence Government's Exhibit 170, which was received in evidence over the following objection and exception by counsel for defendants:

“Mr. Hardy: Your Honor, we object to the introduction of Government's Exhibit 170 as identified here by Mr. Russell, for the reason it appears to be a mortgage executed from a person by the name of Perry, to the Yavapai County Savings Bank, a corporation, which is not a corporation named in the indictment herein, and for the reason that it appears to be immaterial and has no bearing upon the issues in this case. It is a hearsay transaction in so far as these defendants are concerned; no proper foundation has been laid for its admission.

The Court: Overruled.

Mr. Hardy: Exception.”

The full substance of said exhibit is as follows: Original mortgage executed April 16, 1930, by Wm. H. Perry, a widower, mortgaging to Yavapai County Savings Bank, a corporation, real estate situated in Yavapai County, Arizona, described as all that certain real estate and property particu-

larly described as follows: All that portion of the Southwest Quarter of the Northwest Quarter [744] of Section Thirty-three (33), in T. Fourteen (14), North of Range Two (2) West of the Gila and Salt River Base and Meridian, in Yavapai County, Arizona, bounded and described as follows: Beginning at the West quarter corner of said Section 33, above Township and Range, thence North $0^{\circ} 08'$ W. 258.0 feet; thence N. $89^{\circ} 20'$ E. 202.3 feet to a stake which is the actual point of beginning; thence S. $75^{\circ} 17'$ E. 196.3 feet to an iron pin; thence N. $12^{\circ} 09'$ E. 51.4 feet to a cross on a rock; thence N. $18^{\circ} 42'$ E. 56.4 feet to a cross on a rock; thence N. $36^{\circ} 36'$ W. 56.4 feet to an iron pin marking the Northeast corner of said premises; thence N. $83^{\circ} 34'$ W. 173.4 feet to the Northwest corner of said premises; thence S. $09^{\circ} 41'$ W. 60 feet to an iron pin; thence S. $02^{\circ} 47'$ W. 60 feet to the point of beginning. Acknowledged same date before R. O. Barrett, Notary Public Yavapai County, Arizona; secures payment of promissory note of even date of mortgage in the sum of \$2500.00; recorded at request of Guarantee Title & Tr. Co., April 16, 1930, with the County Recorder of Yavapai County, Arizona.

XXVII.

The Court erred in admitting in evidence Government's Exhibit 172, which was received in evidence over the following objection and exception by counsel for defendants:

“Mr. Hardy: We object to its receipt in evidence, your Honor, upon the grounds that no

foundation has been laid for its admission, and the preliminary proceedings leading up to the execution of this Sheriff's deed are not in evidence, and they are the best evidence in order to support the admission of this document.

The Court: Overruled.

Mr. Hardy: Exception." [745]

The full substance of said exhibit is as follows: Sheriff's deed dated May 3, 1930, executed by George C. Ruffner, Sheriff of Yavapai County, Arizona, conveying to Yavapai County Savings Bank, a corporation, property situated in Yavapai County, Arizona, described in Government's Exhibit 170; deed executed in consideration of \$2750.00 paid by Yavapai County Savings Bank to said Sheriff under certificate of sale on foreclosure covering said premises; recorded at request of Favour & Baker, May 3, 1933, Book 158 of Deeds, page 234, records of Yavapai County, Arizona.

XVIII.

The Court erred in admitting the testimony of Government's witness A. W. York, which was admitted over the following objection and exception by counsel for defendants:

The Witness: "Q. Did you, on or about the 20th day, about the month of December, 1930, mortgage any property in Navajo County, Arizona, to the Security Building and Loan Association?

A. I signed a mortgage, yes, sir.

Q. And where did you sign that mortgage?

A. Oakland.

Q. In Oakland?

A. Yes, sir.

Q. How did you happen to sign that mortgage?

Mr. Hardy: Now, your Honor, we object to the answer to that question, because no connection has been shown that would justify an answer by the witness to that question, and for the further reason that up to that time no proper foundation has been laid with respect to any testimony with respect to the mortgage.

The Court: Go ahead, read it.

Mr. Hardy: Exception.

The Witness: A. My daughter wrote me——

Mr. Crouch: We did not hear.

The Witness: My daughter wrote me that the Company she had been connected with had a proposition for me and wanted me to sign same papers. [746]

Mr. Hardy: Now, your Honor, we move that that answer be stricken, because it is hearsay testimony as to these defendants, a letter from his daughter to him.

The Court: It may stand. Go ahead.

Mr. Hardy: Exception.

The Witness: My daughter wrote me saying that the Company that her husband was connected with had a proposition for me in Arizona and that they had something for me to sign, the purpose, as I later on understood, was

for me to come over here and take charge of a ranch in the vicinity of Holbrook.”

XXIX.

The Court erred in refusing to permit defendants' witness Crane to testify, on direct examination, over the following objection by counsel for the Government, and exception by counsel for the defendants, as follows:

“Q. Is it in accordance with the accepted accounting principles for a holding company to absorb a charge to the cost of this investment in a subsidiary corporate company, proportions of the expense of the operation of a subsidiary?

Mr. Flynn: Object to that on the ground it is invading the province of the jury and calling for a conclusion and opinion.

Mr. Hardy: He is an expert, your Honor, and I asked him about the accepted practice of accounting.

The Court: Oh, well, let the jury determine that.

Mr. Hardy: Exception, please. With respect to this character of accounting as between a holding company and its subsidiary, can you state, as a Certified Public Accountant, whether that manner of accounting between the holding company and a subsidiary is approved by the [747] Internal Revenue Bureau of the United States Government?

Mr. Flynn: Object to that on the ground it is immaterial and that it does not tend to prove or disprove any of the issues in this case, and calling for a conclusion and opinion of the witness and invading the province of the jury.

The Court: Sustained.

Mr. Hardy: Exception."

XXX.

The Court erred in permitting Government's witness Milner to testify concerning Government's Exhibit 118, over the following objection and exception by counsel for defendants:

"Mr. Hardy: We object to the introduction of Government's Exhibit 118 for identification for the reason it purports to be an assignment of a mortgage. The mortgage itself is not before the Court, nor has there been any testimony with respect to it. For the further reason that it appears upon the face of the proposed exhibit it is purely hearsay in so far as the defendants on trial are concerned.

Mr. Flynn: Does the Court wish to see the exhibit?

The Court: Yes.

Mr. Hardy: For the further reason no proper foundation has been laid for its reception in evidence.

The Court: It may be received.

Mr. Hardy: Exception.

The full substance of said exhibit is as follows: Assignment of Mortgage, Loan No. 6, executed by

Wm. S. Millener, September 21, 1929, to Security Building and Loan Association, acknowledged on same date by Wm. S. Millener before Eva F. Hill, Notary Public San Diego County, California; recorded at request of John Hobbs, October 7, 1929, in the office of the County Recorder of Pima County, Arizona. Recites in consideration of \$10.00, to [748] Wm. S. Millener in hand paid by Security Building and Loan Association, said Wm. S. Millener assigns to Security Building and Loan Association mortgage dated September 21, 1929, made and executed by Overland Hotel and Investment Company to Wm. S. Millener, which mortgage was recorded on September 24, 1929, in Book 91, of Mortgages, page 438, in the office of the County Recorder of Pima County, Arizona, and also assigns three notes therein described.

XXXI.

The Court erred in charging the jury as follows:

“Regulation 74 of the United States Internal Revenue Department, provides as follows:

That a holding company which guarantees dividends at a specified rate on the stock of a subsidiary corporation for the purpose of securing new capital for the subsidiary and increasing the value of its stock holdings in the subsidiary may not deduct amounts paid in carrying out this guaranty in computing its net income, but such payments may be added to the cost of its stock in the subsidiary.”

Defendants excepted to the foregoing charge for the reason that such regulation had not been introduced in evidence or exhibited or read to the jury. In connection with the exception the Court stated the charge was defendants' requested instruction number 40. Counsel for defendants replied that the requested instruction was not upon the subject charged by the Court.

XXXII.

The Court erred in charging the jury as follows:

“On the question of the birth of the alleged schemes, all the Government need to prove is that that happened when fraud of the character denounced by the indictment was first consciously and intentionally practiced by one or more of the parties charged therewith. If it may have been only a development consciously brought into [749] action out of a scheme in its origin legitimate and honestly intentioned, proof of that fact, convincing beyond a reasonable doubt would be sufficient, and if you are convinced beyond a reasonable doubt that these defendants, or either of them, were at any of the times a party to a scheme to defraud, as charged in the indictment, a withdrawal from such scheme could not be effected by intent alone. There must have been some affirmative action on the part of the defendants to effect such withdrawal.

Defendants excepted to the foregoing charge for the reason that the Court did not define to the jury what would constitute an affirmative act.

XXXIII

The Court erred in refusing to include in its charge defendants' requested instruction number 43, which is as follows:

"You are instructed that there has been no evidence introduced or received in this case that the defendants, or either of them, made or caused to be made any representations that the Security Building and Loan Association had a paid-in capital stock of \$300,000.00, as alleged in the indictment."

XXXIV

The Court erred in denying defendants' motion for an instructed verdict made at the close of the Government's case, and at the close of the whole case, for the reason that the evidence was insufficient to prove the offenses charged, for the following reasons:

1. The evidence was insufficient to prove the commission by said defendants, or either of them, of the alleged offenses charged in the indictment.

2. The evidence was insufficient to prove that said defendants, or either of them, placed or caused to be placed in [750] the United States Post Office for the District of Arizona, the letters and printed matter set forth in the indictment.

3. The evidence was insufficient to show or prove that said defendants, or either of them, did, or could, by the mailing of the letters or printed matter received in evidence, execute the schemes or artifices set forth in the indictment.

Defendants excepted to the refusal of the Court to instruct the jury at the close of the Government's case and at the close of the whole case, for the reasons stated in this assignment of error.

XXXV

The Court erred in refusing to permit defendant Archie C. Shreve to testify on his own behalf and on behalf of defendant Jesse H. Shreve, concerning a conversation between Government's witness Glen O. Perkins, said defendant Jesse H. Shreve, and himself, about which said Government's witness Perkins had previously testified. The grounds urged for the objection, and exception taken, and the full substance of the testimony rejected, are as follows:

The witness Archie C. Shreve testified on direct examination: "Mr. Perkins had a conversation with Dan Shreve and J. H. Shreve and myself in San Diego in connection with this matter in February, 1930.

Q. And how did that arise and what was done in that conference?

Mr. Flynn: We object to that on the ground, first, the question is a double question, and, second, as far as the last part is concerned, it is immaterial, and calling for a conversation that would be self-serving.

Q. Well, what was done with respect to your connection with these companies at that conference?

A. Daniel H. Shreve, and when I refer to Dan, [751] I mean Daniel H. Shreve all the time, had made two trips to Phoenix, and with the idea of taking——

Mr. Flynn: Just a minute, may I ask the witness a question?

Mr. Hardy: Well, I don't think it is proper.

Mr. Flynn: I want to know whether he is answering your question or one he thought up himself. He asked what was done. You are talking about Dan Shreve, so it is——

The Court: I don't know what he is talking about.

Mr. Flynn: I want to know what Dan Shreve did before or after this happened. The question was directed to what happened after.

The Witness: I want to tell you what happened at the conversation with Dan Shreve, Mr. Perkins and J. S. Shreve and myself, when we met in San Diego, California.

Mr. Hardy: State that.

Mr. Flynn: State the conversation? We object to the conversation.

The Court: Why, it is not admissible, and I don't want any more of it. You are just wasting the Court's time by those tactics."

Wherefore, said defendants-appellants, Jesse H. Shreve and Archie C. Shreve, each separately for

himself, pray that by reason of the errors aforesaid the indictment be dismissed and that the judgments and sentences imposed upon them, and each of them, be reversed and held for naught.

LESLIE C. HARDY

Attorney for Defendants Jesse H. Shreve
and Archie C. Shreve. [752]

A true copy of the foregoing Assignment of Errors on behalf of the defendants Jesse H. Shreve and Archie C. Shreve is admitted this 28 day of May, 1938.

FRANK E. FLYNN

United States Attorney

[Endorsed]: Filed May 28, 1938. [753]

[Title of District Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF
RECORD ON APPEAL

To the Clerk of the United States District Court for
the District of Arizona:

You will please prepare a transcript of the record of the above entitled cause on behalf of the defendants, Jesse H. Shreve and Archie C. Shreve, to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, State of California, pursuant to appeals taken by said defendants, Jesse H. Shreve and Archie C. Shreve, in the above

entitled cause, and to include in such transcript of record the following:

(1) The Indictment, filed December 22, 1933.

(2) General and Special Demurrers to the Indictment of the defendants, Jesse H. Shreve, Archie C. Shreve, Daniel H. Shreve and W. C. Evans, filed January 29, 1934.

(3) Supplemental Motion and Demand for Bill of Particulars, filed February 17, 1936.

(4) Bill of Particulars.

(5) Defendants' Objections To and Motion To Supplement Bill of Particulars, filed December 6, 1937.

(6) Verdicts as returned and filed against each of the defendants, filed February 9, 1938.

(7) Motion by defendants Jesse H. Shreve and Archie [754] C. Shreve to Direct a Verdict, filed February 2, 1938.

(8) Motion to Strike Evidence, filed February 2, 1938.

(9) Motion for New Trial, filed February 11, 1938.

(10) Order Fixing Cost Bond on Appeal, filed February 21, 1938.

(11) Cost Bond on Appeal, filed February 24, 1938.

(12) Bail Bond of Jesse H. Shreve on Appeal, filed February 24, 1938.

(13) Bail Bond of Archie C. Shreve on Appeal, filed February 24, 1938.

(14) Notice of Appeal, filed February 21, 1938.

(15) Order Giving Direction for Preparation of Record on Appeal, filed February 21, 1938.

(16) Direction for Preparation of Record on Appeal, filed February 23, 1938.

(17) Order Fixing and Extending Time of Defendants-Appellants Jesse H. Shreve and Archie C. Shreve, within which to Prepare, File and Procure to be Settled the Bill of Exceptions, and to file Assignment of Errors, filed February 23, 1938.

(18) Bill of Exceptions, when approved, settled and filed, and the Certificate of the Judge thereto.

(19) Assignment of Errors by defendants Jesse H. Shreve and Archie C. Shreve, when filed.

(20) Minute Entry of February 24, 1936, Granting Supplemental Motion and Demand for Bill of Particulars.

(21) Minute Entry of December 27, 1937, relating only to denying Motion to Supplement Bill of Particulars and overruling objections thereto.

(22) Minute Entry of January 11, 1938, relating only to overruling general and special demurrers.

(23) Minute Entry of February 21, 1938, relating to judgment and sentence; denying Motion for New Trial; and fixing bail bond on appeal. [755]

(24) This Praeceptum.

(25) Clerk's Certificate.

Dated at Phoenix, Arizona, this 11th day of March, 1938.

LESLIE C. HARDY

Attorney for Defendants Jesse H. Shreve
and Archie C. Shreve.

Service of a copy of the foregoing Praecipe acknowledged this 11th day of March, 1938.

F. E. FLYNN

United States Attorney.

[Endorsed]: Filed Mar. 11, 1938. [756]

[Title of District Court.]

United States of America,
District of Arizona—ss.

I, Edward W. Scruggs, Clerk of the United States District Court for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of the said Court, including the records, papers and files in the case of The United States of America, plaintiff, versus Jesse H. Shreve and Archie C. Shreve, Defendants, numbered C-6863-Tucson on the docket of said Court.

I further certify that the attached pages, numbered 1 to 756, inclusive, contain a full, true and correct transcript of the proceedings of said cause and all the papers filed therein, together with the endorsements of filing thereon, called for and designated in the praecipe filed in said cause and made a part of the transcript attached hereto, as the same appear from the originals of record and on file in my office as such Clerk, in the City of Tucson, State and District aforesaid.

I further certify that the Clerk's fee for preparing and certifying to this said transcript of record

amounts to the sum of \$115.80 and that said sum has been paid to me by counsel for the appellant.

Witness my hand and the seal of said Court this 27th day of June, 1938.

[Seal] EDWARD W. SCRUGGS,
Clerk. [757]

[Endorsed]: No. 8781. United States Circuit Court of Appeals for the Ninth Circuit. Jesse H. Shreve and Archie C. Shreve, Appellants, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Arizona.

Filed June 29, 1938.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.